CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 316

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, APPELLANT,

vs.

CHARLES G. JOHNSON, AS TREASURER OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED AUGUST 14, 1937.

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 8, 1937.

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IN SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

DEPT. No. 2

No. 233,879

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corporation), Plaintiff,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant

AMENDED COMPLAINT TO RECOVER PREMIUM TAXES—Filed May 27, 1936

Now comes plaintiff and by this amendment complains of the above named defendant and for cause of action alleges:

I

Plaintiff is a corporation duly created, organized and existing under and by virtue of the laws of the State of Connecticut, having its Home Office and principal place of business in the City of Hartford, State of Connecticut, and is and during all of the times herein mentioned and for many years prior thereto has been authorized to transact the business of life and accident and health insurance in the [fol. 3] State of California and elsewhere; and defendant herein is now the duly elected, qualified and acting Treasurer of the State of California.

II

That for many years prior to and during the year 1930 plaintiff sold a substantial volume of its life and accident and health contracts in the State of California to residents

of that state, all of which business was conducted and transacted through its local agents in that state, which agents were licensed in accordance with the laws of the State of California; and during the year 1930 plaintiff collected from its policyholders in California net premiums in the amount of $375,460.04, on account of this life and accident and health insurance business which it conducted in California, and plaintiff, in accordance with the law, reported this amount in its annual statement to the California Insurance Department covering the year 1930, which statement was submitted prior to the 1st day of March, 1931.

III

The aforementioned life and accident and health insurance business was conducted within the State of California in accordance with authority granted to plaintiff by the State of California, acting through its Insurance Commis- [fol. 4] sioner, which issued to plaintiff certificates of authority for the year commencing July 1, 1929, and ending June 30, 1930, and also for the period commencing July 1, 1930, and ending June 30, 1931. Said certificates of authority and both of them granted to plaintiff authority "to transact the business of life and accident and health insurance within said state", to-wit, the State of California, but neither certificate of authority authorized plaintiff to transact in California any other type of business except the three types above mentioned, all of which are recognized as types of insurance business under Section 594 of the Political Code of the State of California.

IV

In addition to the aforementioned life and accident and health insurance business which the plaintiff was authorized to and did conduct in the State of California during the year 1930 and for many years prior thereto, the plaintiff was also authorized, under and by virtue of the laws of the State of Connecticut but not under or by virtue of the laws of the State of California, to transact a life reinsurance business, and plaintiff did in fact transact a large volume of this type of business during 1930, it being one of the principal life reinsurance companies of the United [fol. 5] States. Prior to the first day of January, 1930, plaintiff made and entered into in Hartford, Connecticut,

and wholly without the boundaries of the State of California, certain agreements or treaties of reinsurance with other life insurance companies under the terms of which plaintiff reinsured certain other life insurance companies hereinafter referred to as reinsured companies, which reinsured companies were authorized to and were doing business in various states of the United States, including the State of California, in some of which states plaintiff was likewise authorized to do business and in other of which states plaintiff was not authorized to do business. Under the terms of the aforesaid reinsurance agreements or treaties plaintiff agreed to indemnify the reinsured companies for a part or all of the liability which these reinsured companies might incur under one or more of the policies or contracts of life insurance of the reinsured companies issued by the reinsured companies to residents of various states of the United States, including residents of the State of California.

V

No act or transaction whatsoever which the plaintiff had or did in connection with the aforesaid reinsurance agree-
[fol. 6] ments or treaties occurred within the State of California, nor did plaintiff have any dealings with nor assume any liability whatsoever toward or collect any premiums from any of the policyholders of the reinsured companies, nor did it issue any policy to any policyholders of the reinsured companies, nor did it issue any policy to the reinsured companies. All transactions in connection with the aforesaid reinsurance business were conducted by plaintiff and said reinsured companies through the use of the United States mail, and no agent of plaintiff in California at any time had any dealings with the aforesaid reinsurance business, the general life and accident and health insurance business of plaintiff in California and the aforesaid reinsurance business being entirely separate and distinct, and no records of plaintiff in connection with the aforesaid reinsurance business were kept or maintained within the State of California during any of the times herein mentioned.

VI

All considerations which the plaintiff received from the reinsured companies under the terms of the reinsurance agreements or treaties were sent to and received by plain-

tiff in the form of checks mailed through the United States [fol. 7] mail to plaintiff's Home Office at Hartford, Connecticut, from the Home Office of the aforesaid reinsured companies in various states of the United States. Likewise, any sums due from plaintiff to said reinsured companies under the terms of the aforesaid reinsurance agreements or treaties were paid by plaintiff by mailing at Hartford, Connecticut, through the United States mail, a check in a letter addressed to the reinsured company entitled thereto.

VII

During the year 1930 plaintiff received by check through the United States mails at Hartford, Connecticut, on account of the aforesaid reinsurance business from the companies it reinsured net considerations amounting to $416,594.03 on account of reinsurance granted to the reinsured companies where the reinsured companies had issued policies or contracts to residents of the State of California.

VIII

Prior to the first Monday in March, 1931, in accordance with the provisions of the Political Code of the State of California and in further accordance with the requirements of the Insurance Commissioner of the said State, and upon [fol. 8] blanks and forms furnished by him, plaintiff did file with said Insurance Commissioner a statement showing the amount of life, accident and health insurance done by it in said State of California during the year ending December 31, 1930, and conducted as aforesaid, and the sum in premiums collected by plaintiff therefor in the State of California, amounting to $375,460.04. Because said blanks so furnished by said Insurance Commissioner required and because said Insurance Commissioner required of the plaintiff, and not otherwise, plaintiff also in said statement set forth and returned fully to said Insurance Commissioner the true amount of all considerations paid to and received on account of its reinsurance business conducted as aforesaid with other insurance companies in regard to policies or contracts of insurance issued by such other insurance companies to residents of the State of California, amounting to the sum of $416,594.03, so that said Insurance Commissioner was in and by said statement fully advised respecting the true character of plaintiff's business for said

year in said State of California and the extent and character of the protest hereinafter referred to.

[fol. 9] IX

Thereafter and on or before the last day of March, 1931, said Insurance Commissioner duly and regularly made and filed with the State Board of Equalization of said State of California a report showing, among other things, the following:

1. The total amount of office or tabular premiums, denominated by said Insurance Commissioner as gross premiums, being the premiums specified to be paid in and by said policies, without any deductions therefrom, receivable by plaintiff for said year commencing January 1, 1930, and ending December 31, 1930, in the course of the said business done by it in said State of California.

2. The total amount of all gross premiums, meaning thereby the total premiums received by plaintiff for the said year from its said business done by it in said State of California.

3. The total amount of all premiums or portions thereof payable and specified to be paid in and by said policies to plaintiff by its said policyholders during the same period of time on its said business done in said State of California and applied to pay renewal premiums thereof as aforesaid.

4. The total amount of all premiums returned or paid by [fol. 10] plaintiff to its said policyholders during the same period of time on its said business done in said State of California.

5. The total amount of all payments made to plaintiff by insurer companies during the same period of time under and in pursuance of said reinsurance agreements or treaties.

X

That when assessing and levying a tax upon the property and franchise of plaintiff in the State of California in accordance with Subdivision (b) of Section 14, Article XIII of the Constitution of California, and Sections 3664-3671 of the Political Code of said state, said State Board of Equalization included as part of the gross premiums received by

plaintiff from its business done in the State of California as referred to in said statute and constitutional provision, the total of all moneys paid to and received by plaintiff on account of its aforesaid reinsurance business; that the amount so received by plaintiff during 1930 on account of this reinsurance business was $416,594.03 where policies were issued by the reinsured companies to residents of California; that on the life and accident and health insurance business which plaintiff in fact did transact in the State of Cali- [fol. 11] fornia during the year 1930 the amount of gross premiums received by plaintiff was $375,460.04; that in levying a commuted tax upon the property and franchise of plaintiff in California said State Board of Equalization wrongfully and unlawfully taxed plaintiff by computing said tax at 2.6% of the sum of $792,054.07 instead of 2.6% of the sum of $375,460.04, as the same should have been computed, and said State Board of Equalization wrongfully and unlawfully refused to exclude from such computation the sum of $416,594.03, constituting the moneys received by plaintiff by United States Mail at its Home Office in Hartford, State of Connecticut, on account of its reinsurance business conducted as hereinbefore set out in detail.

The said State Board of Equalization duly and regularly met in the State Capitol at Sacramento, California, on the first Monday in March, 1931, as required by law, and thereafter there continued in open session from day to day, Sundays and holidays excepted, until the first Monday in July, 1931. Between said first Monday in March and the third Monday before the first Monday in July, 1931, the said State Board of Equalization assessed and levied against the property and franchise (except real estate) of said corporation located in the State of California, a tax computed at the rate [fol. 12] of 2.6% upon the sum of $792,054.07 amounting to the sum of $20,593.40.

XI

Plaintiff alleges that before making its computation for levying and assessing said tax as heretofore set forth, said State Board of Equalization should have, from the total sum reported to said Board by said Insurance Commissioner as plaintiff's gross premiums from its business done in the State of California, deducted the sum of such reinsurance considerations, to-wit, the sum of $416,594.03, received by plaintiff; as hereinbefore set out; that said State Board of

Equalization failed and refused to make said deduction and imposed a tax purported to be upon plaintiff's property and franchise (except real estate) located in the State of California, which tax was computed at the rate of 2.6% thereon, and which tax on such reinsurance considerations amounted to $10,831.44; all of said tax so levied and assessed computed on the basis of the aforesaid reinsurance business was void and illegal and wrongfully assessed under and by virtue of Section 14 of Article XIII of the Constitution of the State of California and is a tax upon the property and business of plaintiff located without the jurisdiction of the State of [fol. 13] California in violation of the fourteenth Amendment of the Constitution of the United States.

XII

The said State Board of Equalization, prior to the said first Monday of July, 1931, prepared a book in one or more volumes called "record of assessment for State Taxes," in which were entered in writing and printing each and every assessment and levy made by said Board including the assessment and levy against plaintiff hereinbefore particularly referred to; and on the first Monday in July, 1931, the Secretary of said Board of Equalization delivered to the State Controller of said State its said record of said assessments for state taxes duly certified to by the Chairman and Secretary of said State Board.

XIII

Thereafter and on or before the seventh day of August, 1931, plaintiff involuntarily and under protest paid to defendant the sum of $5,415.72, representing the tax levied and assessed against plaintiff on the basis of the reinsurance business not conducted in the State of California, which tax was wrongfully levied and assessed against plaintiff, and at the same time plaintiff paid to defendant the sum of $4,880.98, representing the tax levied and assessed against [fol. 14] plaintiff on account of its gross premiums derived from its life and accident and health insurance business which plaintiff did in fact conduct in California, these payments representing one-half of the taxes levied and assessed for the year 1930. Likewise, on or about the 23rd day of January, 1932, plaintiff paid to defendant similar amounts, the payment of $5,415.72 on account of plaintiff's reinsur-

ance business being made involuntarily and under protest. At the time of making each of said payments of taxes as hereinbefore set out in this paragraph, plaintiff, being dissatisfied with the assessment so made against it as aforesaid, filed with said State Controller of the State of California a written protest stating what part of said tax was claimed by it to be void and illegal, to-wit, the sum of $10,831.44, and the grounds upon which said claim was founded. In and by said written protest plaintiff stated and claimed what amounts were improperly included in the gross premiums upon which said State Board of Equalization computed said tax, to-wit, the amount of $416,594.03.

XIV

That in assessing and levying taxes upon the property of plaintiff as authorized by Subdivision (b) of Section 14 of [fol. 15] Article XIII of the Constitution of California, the taxing authorities of said state, to-wit, the State Board of Equalization, have adopted and followed a construction of said Section of said State Constitution, which results in a tax on plaintiff's property and franchise not located in said state and in violation of plaintiff's rights under the Fourteenth Amendment of the Constitution of the United States. Said State Board of Equalization in computing the tax upon said reinsurance considerations levied a tax on account of business not done in the State of California, and on contracts executed wholly and to be performed and in fact performed wholly without the boundaries of the State of California. If said Subdivision (b) of Section 14 of Article XIII of the Constitution of California is construed so as to tax plaintiff on the basis of the reinsurance considerations received as aforesaid, then this provision is invalid and invalid as to plaintiff as being in conflict with and in violation of the Constitution of the United States and particularly the Fourteenth Amendment thereof and that section of the Fourteenth Amendment prohibiting the taking of property without due process of law.

XV

If Subdivision (b) of Section 14, Article XIII of the Constitution of California taxes plaintiff on the basis of its re- [fol. 16] insurance business conducted as aforesaid, then it is invalid as to plaintiff as in conflict with the Fourteenth

Amendment to the Constitution of the United States and particularly that section of the Fourteenth Amendment prohibiting the taking of property without due process of law in that a tax is levied against plaintiff on account of a franchise not granted to plaintiff by the State of California and a privilege not exercised by plaintiff within the State of California, plaintiff being authorized to conduct and conducing in the State of California only the business of life and accident and health insurance in accordance with the certificates of authority from the State of California as hereinbefore referred to.

XVI

In levying the aforementioned tax against plaintiff based on the reinsurance considerations received by plaintiff outside of the State of California, the state denies to plaintiff the equal protection of its laws contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States in that plaintiff is required because of the peculiar type and distribution of its business to pay to defendant for the year 1930 a tax of $20,593.40 for the privilege of doing business in the State of California. This tax [fols. 17-18] as measured by the business which plaintiff in fact did in the State of California during 1930, to-wit, the receipt by plaintiff of net premiums in the amount of $375,460.04, represents a tax in excess of 5.6% of said net premiums, the operation of such tax as to plaintiff being highly discriminatory and otherwise violative of its rights under the Fourteenth Amendment of the Constitution of the United States, other life insurance companies organized under state laws other than California and authorized to do business in the State of California but not accepting reinsurance being required to pay a tax equal only to 2.6% of net premiums received on California business.

Wherefore, plaintiff demands judgment against defendant for the sum of $10,831.33, together with interest thereon on half this sum from August 7, 1931, and on half this sum from January 23, 1932, and together with its proper costs.

Raymond Benjamin, Hartley F. Peart, Attorneys for Plaintiff.

Duly sworn to by Hartley F. Peart. Jurat omitted in printing.

[fol. 19] (Endorsed:) Receipt of a copy of the within this 27 day of May, 1936, is hereby admitted.

U. S. Webb, Attorney General, Neil Cunningham, Deputy. D.

[File endorsement omitted.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

DEMURRER—Filed June 8, 1936

Comes now the defendant Charles G. Johnson, as Treasurer of the State of California, and demurs to the plaintiff's complaint herein and for grounds of demurrer alleges that said complaint does not state facts sufficient to constitute a cause of action.

Wherefore, defendant prays that plaintiff take nothing by its action and for his costs of suit herein expended.

U. S. Webb, Attorney General; Neil Cunningham, Deputy Attorney General; James J. Arditto, Deputy Attorney General, Attorneys for Defendant.

[fol. 20] (Endorsed:) Service of the within demurrer admitted this 8th day of June, 1936.

Hartley F. Peart, Attorney for Plaintiff.

[File endorsement omitted.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

ORDER SUSTAINING DEMURRER TO COMPLAINANT—June 8, 1936

In this action, it is ordered, that the demurrer to the complaint be sustained without leave to amend.

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

JUDGMENT—Filed June 10, 1936

An order having been entered in this action on the 8th day of June, 1936, sustaining the demurrer to the amended

complaint herein without leave to plaintiff to further amend its said complaint,

Now, on motion of U. S. Webb, Attorney General, by Neil Cunningham, Deputy Attorney General, attorneys for said [fol. 21] defendant, it is ordered and adjudged that the amended complaint herein be, and the same is hereby dismissed.

Dated this 10th day of June, 1936.

Frank T. Deasy, Judge of the Superior Court.

(Endorsed:) Receipt of copy of the within judgment admitted this 10th day of June, 1936.

Raymond Benjamin, Hartley F. Peart, Attorneys for Plaintiff.

[File endorsement omitted.]

Recorded June 11, 1936, 2:05 o'clock P. M., volume 392, page 97.

Robert Munson, Clerk, by F. J. Meincke, Deputy Clerk.

[fol. 22] Clerk's certificate to judgment roll omitted in printing.

[fol. 23] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF APPEAL TO SUPREME COURT—Filed July 3, 1936

To W. R. Castagnetto, County Clerk and Ex-officio clerk of the Superior Court of the State of California, in and for the City and County of San Francisco; and to Charles G. Johnson, as Treasurer of the State of California, the defendant above named; and to U. S. Webb, Attorney General of the State of California; and to Neil Cunningham and James J. Arditto, Deputy Attorneys General of the State of California, attorneys for said defendant above named:

You and each of you will please take notice that the plaintiff above named hereby appeals to the Supreme Court of the State of California, from that certain judgment given, made and entered in the above entitled action in favor of

the defendant and against the plaintiff, which judgment is dated June 10, 1936, and was entered and recorded on June 11th, 1936, in book 392 of judgments at page 92 in the office of the clerk of the above entitled court.

This appeal is taken from the whole of said judgment.

[fol. 24] Dated, July 3, 1936.

Hartley F. Peart, Raymond Benjamin, Attorneys for Plaintiff.

(Endorsed:) Service and receipt of a copy of the within notice of appeal this 3d day of July, 1936, is hereby admitted.

U. S. Webb, Attorney General; Neil Cunningham, Deputy, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 25] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

STIPULATION AS TO TRANSCRIPT ON APPEAL

It is hereby stipulated that the foregoing transcript on appeal is correct; that it contains full, true and correct copies of all the papers therein set forth now on file in the office of the county clerk of the City and County of San Francisco, State of California; that the said foregoing papers shall constitute the transcript on appeal in this cause and that the appeal may be heard and determined thereon.

Dated, August —, 1936.

U. S. Webb, Attorney General of the State of California; Neil Cunningham, James J. Arditto, Deputy Attorneys General of the State of California, Attorneys for Respondent. Raymond Benjamin, Hartley F. Peart, Attorneys for Appellant.

[fol. 26] Clerk's certificate to transcript on appeal omitted in printing.

[fol. 26½] Due service and receipt of a copy of the within is hereby admitted this — day of August, 1936.

U. S. Webb, Attorney General of the State of California, by James J. Arditto.

Received a copy of the within this 11 day of August, 1936, for the Judge who tried the cause.

W. R. Castagnetto, Clerk, by H. P. McGlenon, Deputy Clerk.

[fol. 27] [File endorsement omitted]

[fols. 28-30] IN SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, DEPT. NO. 2

No. 241,413

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corporation), Plaintiff,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant

AMENDED COMPLAINT TO RECOVER PREMIUM TAXES—Filed March 5, 1936

Now comes plaintiff and by this amendment complains of the above named defendant and for cause of action alleges:

I

Plaintiff is a corporation duly created, organized and existing under and by virtue of the laws of the State of Connecticut, having its Home Office and principal place of business in the City of Hartford, State of Connecticut, and is and during all of the times herein mentioned and for many years prior thereto has been authorized to transact the business of life and accident and health insurance in the State of California and elsewhere; and defendant herein [fol. 31] is now the duly elected, qualified and acting Treasurer of the State of California.

II

That for many years prior to and during the year 1931 plaintiff sold a substantial volume of its life and accident and health contracts in the State of California to residents of that state, all of which business was conducted and transacted through its local agents in that state, which agents were licensed in accordance with the laws of the State

of California; and during the year 1931 plaintiff collected from its policyholders in California net premiums in the amount of $374,792.41, on account of this life and accident and health insurance business which it conducted in California, and plaintiff, in accordance with the law, reported this amount in its annual statement to the California Insurance Department covering the year 1931, which statement was submitted prior to the 1st day of March, 1932.

III

The aforementioned life and accident and health insurance business was conducted within the State of California in accordance with authority granted to plaintiff by the State of California, acting through its Insurance Commissioner, which issued to plaintiff certificates of authority [fol. 32] for the year commencing July 1, 1930, and ending June 30, 1931, and also for the period commencing July 1, 1931, and ending June 30, 1932. Said certificates of authority and both of them granted to plaintiff authority "to transact the business of life and accident and health insurance within said state," to-wit, the State of California, but neither certificate of authority authorized plaintiff to transact in California any other type of business except the three types above mentioned, all of which are recognized as types of insurance business under Section 594 of the Political Code of the State of California.

IV

In addition to the aforementioned life and accident and health insurance business which the plaintiff was authorized to and did conduct in the State of California during the year 1931 and for many years prior thereto, the plaintiff was also authorized, under and by virtue of the laws of the State of Connecticut but not under or by virtue of the laws of the State of California, to transact a life reinsurance business, and plaintiff did in fact transact a large volume of this type of business during 1931, it being one of the principal life reinsurance companies of the United States. Prior to the [fol. 33] first day of January, 1931, plaintiff made and entered into in Hartford, Connecticut, and wholly without the boundaries of the State of California, certain agreements or treaties of reinsurance with other life insurance companies under the terms of which plaintiff reinsured certain other life insurance companies hereinafter referred

to as reinsured companies, which reinsured companies were authorized to and were doing business in various states of the United States, including the State of California, in some of which states plaintiff was likewise authorized to do business and in other of which states plaintiff was not authorized to do business. Under the terms of the aforesaid reinsurance agreements or treaties plaintiff agreed to indemnify the reinsured companies for a part or all of the liability which these reinsured companies might incur under one or more of the policies or contracts of life insurance of the reinsured companies issued by the reinsured companies to residents of various states of the United States, including residents of the State of California.

V

No act or transaction whatsoever which the plaintiff had or did in connection with the aforesaid reinsurance agreements or treaties occurred within the State of California, nor did plaintiff have any dealings with nor assume any [fol. 34] liability whatsoever toward or collect any premiums from any of the policyholders of the reinsured companies, nor did it issue any policy to any policyholders of the reinsured companies, nor did it issue any policy to the reinsured companies. All transactions in connection with the aforesaid reinsurance business were conducted by plaintiff and said reinsured companies through the use of the United States Mail, and no agent of plaintiff in California at any time had any dealings with the aforesaid reinsurance business, the general life and accident and health insurance business of plaintiff in California and the aforesaid reinsurance business being entirely separate and distinct, and no records of plaintiff in connection with the aforesaid reinsurance business were kept or maintained within the State of California during any of the times herein mentioned.

VI

All considerations which the plaintiff received from the reinsured companies under the terms of the reinsurance agreements or treaties were sent to and received by plaintiff in the form of checks mailed through the United States Mail to plaintiff's Home Office at Hartford, Connecticut, from the Home Office of the aforesaid reinsured companies in various states of the United States. Likewise, any sums

[fol. 35] due from plaintiff to said reinsured companies under the terms of the aforesaid reinsurance agreements or treaties were paid by plaintiff by mailing at Hartford, Connecticut, through the United States Mail, a check in a letter addressed to the reinsured company entitled thereto.

VII

During the year 1931 plaintiff received by check through the United States Mails at Hartford, Connecticut, on account of the aforesaid reinsurance business from the companies it reinsured net considerations amounting to $419,467.69 on account of reinsurance granted to the reinsured companies where the reinsured companies had issued policies or contracts to residents of the State of California.

VIII

Prior to the first Monday in March, 1932, in accordance with the provisions of the Political Code of the State of California and in further accordance with the requirements of the Insurance Commissioner of the said State, and upon blanks and forms furnished by him, plaintiff did file with said Insurance Commissioner a statement showing the amount of life, accident and health insurance done by it in said State of California during the year ending December [fol. 36] 31, 1931, and conducted as aforesaid, and the sum in premiums collected by plaintiff therefor in the State of California, amounting to $374,792.41. Because said blanks so furnished by said Insurance Commissioner required and because said Insurance Commissioner required of the plaintiff, and not otherwise, plaintiff also in said statement set forth and returned fully to said Insurance Commissioner the true amount of all considerations paid to and received on account of its reinsurance business conducted as aforesaid with other insurance companies in regard to policies or contracts of insurance issued by such other insurance companies to residents of the State of California, amounting to the sum of $419,467.69, so that said Insurance Commissioner was in and by said statement fully advised respecting the true character of plaintiff's business for said year in said State of California and the extent and character of the protest hereinafter referred to.

IX

Thereafter and on or before the last day of March, 1932, said Insurance Commissioner duly and regularly made and filed with the State Board of Equalization of said State of California a report showing, among other things, the following:

[fol. 37] 1. The total amount of office or tabular premiums, denominated by said Insurance Commissioner as gross premiums, being the premiums specified to be paid in and by said policies, without any deductions therefrom, receivable by plaintiff for said year commencing January 1, 1931, and ending December 31, 1931, in the course of the said business done by it in said State of California.

2. The total amount of all gross premiums, meaning thereby the total premiums received by plaintiff for the said year from its said business done by it in said State of California.

3. The total amount of all premiums or portions thereof payable and specified to be paid in and by said policies to plaintiff by its said policyholders during the same period of time on its said business done in said State of California and applied to pay renewal premiums thereof as aforesaid.

4. The total amount of all premiums returned or paid by plaintiff to its said policyholders during the same period of time on its said business done in said State of California.

5. The total amount of all payments made to plaintiff by insurer companies during the same period of time under and in pursuance of said reinsurance agreements or treaties.

[fol. 38] X

That when assessing and levying a tax upon the property and franchise of plaintiff in the State of California in accordance with Subdivision (b) of Section 14, Article XIII of the Constitution of California, and Sections 3664-3671 of the Political Code of said state, said State Board of Equalization included as part of the gross premiums received by plaintiff from its business done in the State of California as referred to in said statute and constitutional provision, the total of all moneys paid to and received by plaintiff on account of its aforesaid reinsurance business;

that the amount so received by plaintiff during 1931 on account of this reinsurance business was $419,467.69 where policies were issued by the reinsured companies to residents of California; that on the life and accident and health insurance business which plaintiff in fact did transact in the State of California during the year 1931 the amount of gross premiums received by plaintiff was $374,792.41; that in levying a commuted tax upon the property and franchise of plaintiff in California said State Board of Equalization wrongfully and unlawfully taxed plaintiff by computing said tax at 2.6% of the sum of $749,260.10 instead of 2.6% of the sum of $374,792.41, as the same should have been computed, and said State Board of Equalization [fol. 39] wrongfully and unlawfully refused to exclude from such computation the sum of $419,467.69, constituting the moneys received by plaintiff by United States Mail at its Home Office in Hartford, State of Connecticut, on account of its reinsurance business conducted as hereinbefore set out in detail.

The said State Board of Equalization duly and regularly met in the State Capitol at Sacramento, California, on the first Monday in March, 1932, as required by law, and thereafter there continued in open session from day to day, Sundays and holidays excepted, until the first Monday in July, 1932. Between said first Monday in March and the third Monday before the first Monday in July, 1932, the said State Board of Equalization assessed and levied against the property and franchise (except real estate) of said corporation located in the State of California, a tax computed at the rate of 2.6% upon the sum of $794,260.10 amounting to the sum of $20,650.76.

XI

Plaintiff alleges that before making its computation for levying and assessing said tax as heretofore set forth, said State Board of Equalization should have, from the total sum reported to said Board by said Insurance Commissioner as plaintiff's gross premiums from its business done [fol. 40] in the State of California, deducted the sum of such reinsurance considerations, to-wit, the sum of $419,467.69, received by plaintiff, as hereinbefore set out; that said State Board of Equalization failed and refused to make said deduction and imposed a tax purported to be

upon plaintiff's property and franchise (except real estate) located in the State of California, which tax was computed at the rate of 2.6% thereon, and which tax on such reinsurance considerations amounted to $10,906.16; all of said tax so levied and assessed computed on the basis of the aforesaid reinsurance business was void and illegal and wrongfully assessed under and by virtue of Section 14 of Article XIII of the Constitution of the State of California and is a tax upon the property and business of plaintiff located without the jurisdiction of the State of California in violation of the fourteenth Amendment of the Constitution of the United States.

XII

The said State Board of Equalization, prior to the said first Monday of July, 1932, prepared a book in one or more volumes called "record of assessment for State Taxes", in which were entered in writing and printing each and every assessment and levy made by said Board including the [fol. 41] assessment and levy against plaintiff hereinbefore particularly referred to; and on the first Monday in July, 1932, the Secretary of said Board of Equalization delivered to the State Controller of said State its said record of said assessments for state taxes duly certified to by the Chairman and Secretary of said State Board.

XIII

Thereafter and on or before the fifteenth day of August, 1932, plaintiff involuntarily and under protest paid to defendant the sum of $5,453.08, representing the tax levied and assessed against plaintiff on the basis of the reinsurance business not conducted in the State of California, which tax was wrongfully levied and assessed against plaintiff, and at the same time plaintiff paid to defendant the sum of $4,872.30, representing the tax levied and assessed against plaintiff on account of its gross premiums derived from its life and accident and health insurance business which plaintiff did in fact conduct in California, these payments representing one-half of the taxes levied and assessed for the year 1931. Likewise, on or before the second day of February, 1933, plaintiff paid to defendant similar amounts, the payment of $5,453.08 on account of plaintiff's reinsurance business being made involuntarily and under

protest. At the time of making each of said payments of [fol. 42] taxes as hereinbefore set out in this paragraph, plaintiff, being dissatisfied with the assessment so made against it as aforesaid, filed with said State Controller of the State of California a written protest stating what part of said tax was claimed by it to be void and illegal, to-wit, the sum of $10,906.16, and the grounds upon which said claim was founded. In and by said written protest plaintiff stated and claimed what amounts were improperly included in the gross premiums upon which said State Board of Equalization computed said tax, to-wit, the amount of

XIV

That in assessing and levying taxes upon the property of plaintiff as authorized by Subdivision (b) of Section 14 of Article XIII of the Constitution of California, the taxing authorities of said state, to-wit, the State Board of Equalization, have adopted and followed a construction of said Section of said State Constitution, which results in a tax on plaintiff's property and franchise not located in said state and in violation of plaintiff's rights under the Fourteenth Amendment of the Constitution of the United States. Said State Board of Equalization in computing the tax upon said reinsurance considerations levied a tax on account of business not done in the State of California, [fol. 43] and on contracts executed wholly and to be performed and in fact performed wholly without the boundaries of the State of California. If said Subdivision (b) of Section 14 of Article XIII of the Constitution of California is construed so as to tax plaintiff on the basis of the reinsurance considerations received as aforesaid, then this provision is invalid and invalid as to plaintiff as being in conflict with and in violation of the Constitution of the United States and particularly the Fourteenth Amendment thereof and that section of the Fourteenth Amendment prohibiting the taking of property without due process of law.

XV

If Subdivision (b) of Section 14, Article XIII of the Constitution of California taxes plaintiff on the basis of its reinsurance business conducted as aforesaid, then it is invalid as to plaintiff as in conflict with the Fourteenth

Amendment to the Constitution of the United States and particularly that section of the Fourteenth Amendment, prohibiting the taking of property without due process of law in that a tax is levied against plaintiff on account of a franchise not granted to plaintiff by the State of California and a privilege not exercised by plaintiff within the State of California, plaintiff being authorized to conduct [fol. 44] and conducting in the State of California only the business of life and accident and health insurance in accordance with the certificates of authority from the State of California as hereinbefore referred to.

XVI

In levying the aforementioned tax against plaintiff based on the reinsurance considerations received by plaintiff outside of the State of California, the state denies to plaintiff the equal protection of its laws contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States in that plaintiff is required because of the peculiar type and distribution of its business to pay to defendant for the year 1931 a tax of $20,650.76 for the privilege of doing business in the State of California. This tax as measured by the business which plaintiff in fact did in the State of California during 1931, to-wit, the receipt by plaintiff of net premiums in the amount of $374,792.41, represents a tax in excess of 5.6% of said net premiums, the operation of such tax as to plaintiff being highly discriminatory and otherwise violative of its rights under the Fourteenth Amendment of the Constitution of the United States, other life insurance companies organized under state laws other than California and authorized to do busi- [fol. 45] ness in the State of California but not accepting reinsurance being required to pay a tax equal only to 2.6% of net premiums received on California business.

Wherefore, plaintiff demands judgment against defendant for the sum of $10,906.16, together with interest thereon on half this sum from August 15, 1932, and on half this sum from February 2, 1933, and together with its proper costs.

Raymond Benjamin, Hartley F. Peart, Attorneys for Plaintiff.

Daly sworn to by Hartley F. Peart. Jurat omitted in printing.

[fol. 46] Affidavit of Service of Amended Complaint

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Kenneth L. White, being duly sworn, deposes and says: That on the 4th day of March, 1936, Neil Cunningham, Esq., Deputy Attorney General of the State of California, attorney for defendant in the above entitled action, was absent from his office, and that during such absence he, the said Kenneth L. White, served upon the said Neil Cunningham, Esq., at his office in the State Building, Civic Center, in said [fol. 47] County and State, a full and true copy of the within amended complaint to recover premium taxes, by leaving said copy in said office, with Ray Dibble, the person then having charge of said office.

Kenneth L. White.

Subscribed and sworn to before me this 5th day of March, 1936. R. A. Anderson, Notary Public in and for the City and County of San Francisco, State of California. My commission expires December 31, 1938. (Seal.)

[File endorsement omitted.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

DEMURRER—Filed May 20, 1936

Comes now the above named defendant and demurs to the amended complaint of the above named plaintiff herein upon the ground that said amended complaint fails to state facts sufficient in law to constitute a cause of action against said defendant.

Whereas, defendant prays that said amended complaint be dismissed.

[fol. 48] Dated, May 19, 1936.

U. S. Webb, Attorney General of the State of California; Neil Cunningham, Deputy Attorney General; James J. Arditto, Deputy Attorney General, Attorneys for Defendant.

(Endorsed:) Service of the within demurrer to amended complaint admitted this 20th day of May, 1936.

Raymond Benjamin, Hartley F. Peart, Attorneys for Plaintiff.

[File endorsement omitted.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

ORDER SUSTAINING DEMURRER TO COMPLAINT—June 8, 1936

In this action, it is ordered, that the demurrer to the complaint be sustained without leave to amend.

[fol. 49] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

JUDGMENT—Filed June 10, 1936

An order having been entered in this action on the 8th day of June, 1936, sustaining the demurrer to the amended complaint herein without leave to plaintiff to further amend its said complaint,

Now, on motion of U. S. Webb, Attorney General, by Neil Cunningham, Deputy Attorney General, attorneys for said defendant, it is hereby ordered and adjudged that the amended complaint herein be, and the same is hereby dismissed.

Dated, June 10, 1936.

Frank T. Deasy, Judge of the Superior Court.

(Endorsed:) Receipt of copy of the within judgment admitted this 10th day of June, 1936.

Raymond Benjamin, Hartley F. Peart, Attorneys for Plaintiff.

[File endorsement omitted.]

Recorded Jun. 11, 1936, 4:00 o'clock P. M., volume 391, page 218.

Robert Munson, Clerk, by R. D. Carroll, Deputy Clerk.

[fol. 50] Clerk's certificate to judgment roll omitted in printing.

[fol. 51] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF APPEAL TO SUPREME COURT—Filed July 3, 1936

To W. R. Castagnetto, county clerk and exofficio clerk of the Superior Court of the State of California, in and for the City and County of San Francisco; and to Charles G. Johnson, as treasurer of the State of California, the defendant above named; and to U. S. Webb, attorney general of the State of California; and to Neil Cunningham and James J. Arditto, deputy attorneys general of the State of California, attorneys for said defendant above named:

You and each of you will please take notice that the plaintiff above named hereby appeals to the Supreme Court of the State of California, from that certain judgment given, made and entered in the above entitled action in favor of the defendant and against the plaintiff, which judgment is dated June 10, 1936, and was entered and recorded on June 11th, 1936, in book 391 of judgments at page 218 in the office of the clerk of the above entitled court.

This appeal is taken from the whole of said judgment.

[fol. 52] Dated, July 3, 1936.

Raymond Benjamin, Hartley F. Peart, Attorneys for Plaintiff.

(Endorsed:) Service and receipt of a copy of the within notice of appeal this 3rd day of July, 1936, is hereby admitted.

U. S. Webb, Attorney General; by Neil Cunningham, Deputy, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 53] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

STIPULATION AS TO TRANSCRIPT ON APPEAL

It is hereby stipulated that the foregoing transcript on appeal is correct; that it contains full, true and correct copies of all the papers therein set forth now on file in the office of the county clerk of the City and County of San Francisco, State of California; that the said foregoing papers shall constitute the transcript on appeal in this cause and that the appeal may be heard and determined thereon.

Dated, August 11, 1936.

U. S. Webb, Attorney General of the State of California; Neil Cunningham, James J. Arditto, Deputy Attorneys General of the State of California, Attorneys for Respondent. Raymond Benjamin, Hartley F. Peart, Attorneys for Appellant.

[fol. 54] Clerk's certificate to transcript on appeal omitted in printing.

[fol. 54½] Due service and receipt of a copy of the within is hereby admitted this — day of August, 1936.

U. S. Webb, Attorney General of the State of California, by James J. Arditto, ——— ———, Deputy Attorneys General of the State of California, Attorneys for Respondent.

Received a copy of the within this 11 day of August, 1936, for the Judge who tried the cause.

W. R. Castagnetto, Clerk, by H. P. McGlenon, Deputy Clerk.

[fol. 55] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

S. F. No. 15724

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, a Corporation, Plaintiff and Appellant,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant and Respondent

S. F. No. 15725

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, a Corporation, Plaintiff and Appellant,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant and Respondent

STIPULATION TO CONSOLIDATE—Filed August 29, 1936

It is Hereby Stipulated by and between the parties to each of the above entitled actions that the appeals of the appellant, Connecticut General Life Insurance Company, from the judgment in each of said actions in favor of the respondent, be consolidated for hearing and determination on appeal; and that the appellant shall serve and file one opening brief on appeal in support of its said appeals in both cases, and the respondent, Charles G. Johnson, as Treasurer of the State of California, shall serve and file [fol. 56] one reply brief thereto, and said appellant, one closing brief.

U. S. Webb, Attorney General of the State of California; Neil Cunningham, James J. Arditto, Deputy Attorneys General of the State of California, Attorneys for Charles G. Johnson, as Treasurer of California, Respondent. Raymond Benjamin, Hartley F. Peart, Attorneys for Connecticut General Life Insurance Company, Appellant.

By the COURT:

On foregoing stipulation so ordered Aug. 29, 1936.

Waste, Chief Justice.

[File endorsement omitted.]

[fol. 57] IN SUPREME COURT OF CALIFORNIA

S. F. No. 15724. In Bank. April 26, 1937

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corporation), Plaintiff and Appellant,

v.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant and Respondent

S. F. No. 15725. In Bank. April 26, 1937

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corporation), Plaintiff and Appellant,

v.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant and Respondent

OPINION

These two actions, while appealed separately, have been argued together, and as they present the same identical question, they may and will be considered in one opinion. The only difference in the two actions, is that in action S. F. No. 15724 the plaintiff seeks to recover taxes paid for the calendar year 1930, while in action S. F. No. 15725 recovery is sought for the year 1931. These actions differ in no material respect from the two actions bearing the same title and reported in 3 Cal. (2d) 83, except as to the years during which the taxes involved accrued. In our decision in those actions we held that the taxes paid by plaintiff which it sought to recover in those actions, were [fol. 58] legally levied and collected and the plaintiff was not entitled to recover any portion of the taxes so paid by it. As to all the questions involved in those appeals which were discussed and decided therein, we adhere to the conclusions reached by us in that decision.

The present actions were pending at the time the former cases were decided. On the going down of the remittitur in the former appeals, the plaintiff amended its complaints in the two instant actions by expressly pleading the fourteenth amendment to the Constitution of the United States and alleging that the assessment and levy of a tax against

plaintiff on the basis of its reinsurance business transacted during the two years covered by the complaints in these actions violated the provisions of this section of the federal Constitution.

There are set forth in said amended complaints, three grounds upon which the plaintiff relies in support of its contention that the assessment and levy of said tax against it violated the fourteenth amendment of the United States Constitution. These grounds are now relied upon by the plaintiff in support of its appeals herein.

It is first contended that the state board of equalization in computing the tax upon the reinsurance business of plaintiff levied a tax on account of business not done in the state of California and on contracts executed wholly and performed entirely without this state. This contention was the basis of the plaintiff's argument upon the former appeals, and it was decided adversely to plaintiff. We see no good reason for restating our position upon this question as our former decision fully answers the present contention of plaintiff.

It is next contended that the computation of said tax upon the basis of reinsurance done by plaintiff is violative of said constitutional section, and is the taking of plaintiff's property without due process of law in that said tax is levied against plaintiff on account of a transaction and privilege not granted to plaintiff by the state of California and not exercised by the plaintiff within this state. Plaintiff alleges that the plaintiff during the years for which said tax was levied held a legal and valid certificate of authority issued by the officials of this state authorizing it to do and transact the business of life and accident and health insurance within this state. It further alleges that neither of these certificates of authority authorized plaintiff to transact in California any other type of insurance except the three types above mentioned, all of which are recognized as types of insurance under section 594 of the Political Code of the state of California.

This section of the code was amended in 1933, and in 1935 the Insurance Code was adopted, which superseded section 594 of the Political Code classifying insurance business. As these amendments were subsequent to the years during which the taxes herein involved accrued, the present actions are governed by the provisions of section 594 of the Political Code prior to its amendment in 1933. Neither the amend-

ment of 1933 nor the provisions of the Insurance Code change the law in any material respect, in so far as it applies to any point raised in these actions, from what it was prior to the year 1933. Section 594 of the Political Code provides for some twenty different classes of insurance for which certificates of authority may be issued in this state. No mention is made of reinsurance in said section as a separate class of insurance which may be carried on in this state. This does not mean that the business of reinsurance may not be carried on in this state. It may [fol. 59] mean, however, that the business of reinsurance is included in the respective classes of insurance enumerated in said section of the code. That is to say, that a certificate of authority to engage in the business of fire insurance includes the authority to engage in the business of fire reinsurance.

"Reinsurance contracts as a general rule, involve no legal principles essentially different from those applicable to contracts generally, nor does the contract necessarily differ in form from original insurance. And reinsurance was a valid contract at common law and * * * has generally been regarded as a legitimate and valid contract; reinsurance now being generally practiced." (Cyclopedia of Insurance Law, Couch, vol. 1, p. 65, sec. 44.) Again, the same author makes the following statement: "An insurance company empowered 'to make contracts of insurance' or 'all kinds of insurance against losses by fire', may make a contract of reinsurance. * * *" (Vol. 8, p. 7393, sec. 2258.) We find the identical statement in Joyce on I-surance, volume 1, page 345, section 115.

The case of New York Bowery Fire Insurance Company v. The New York Fire Insurance Company of New York, 17 Wendell (N. Y.) 359, seems to be the foundation for the above statement quoted above from the works of the two well-known authors. In that case we find the question discussed as follows: "It is objected that these companies had no authority under their charters of incorporation to enter into the contract of re-assurance. By the 6th section of the Act incorporating the plaintiffs, Laws of 1832, p. 292, they have power 'to make contracts of insurance against loss by fire of any houses or buildings whatsoever, and of any goods, chattels or personal estate whatsoever'. By the 6th section of the Act incorporating the Bowery Co: Laws of 1833, p. 296, they have power 'to make all kinds of

insurance against losses by fire, of any houses and buildings whatsoever; and also upon all goods, wares and merchandise whatsoever'. Re-assurance is but a modification of the contract of insurance, and is, I think, clearly included in the power of the plaintiffs, 'to make contracts of insurance', and of the defendants 'to make all kinds of insurance' against losses by fire. * * *"

Section 594 of the Political Code enumerates all the different classes of insurance authorized to be transacted in this state. It does not mention reinsurance. If reinsurance business is not included within one or more of the different classes of insurance mentioned in this code section, then there is no law in this state governing that class of insurance, and it might follow that that type of insurance business is not permitted in this state. In the adoption of the Insurance Code in 1935, the insurance law of the state was rewritten, and in many instances material changes were made therein. Yet in this latest legislative enactment on the subject, we find no mention made of reinsurance as a separate and distinct type from ordinary insurance although other references are made therein to the business of reinsurance. In fact, the Insurance Code follows verbatim the classification of the different classes of insurance enumerated in section 594, Political Code, prior to its repeal. It is hardly reasonable that the commission which framed the Insurance Code, and the legislature which enacted the bill proposed by the commission into law, as well as section 594, Political Code, and its amendment, intended to leave the business of reinsurance without regulation in this state. The only reasonable conclusion to be drawn from their actions as well as from the authorities cited above, is that the business of reinsurance is but a modification of ordinary [fol. 60] insurance and is included in a certificate authorizing an insurance company to carry on any of the general lines of insurance mentioned in the statute. The plaintiff, therefore, cannot legally claim that during the times mentioned in the amended complaints in these actions, the certificates of authority issued to it to transact the business of life, accident and health insurance, did not authorize it to do a reinsurance business in these three classes of insurance. It is true that plaintiff has alleged that it had no certificate of authority to transact reinsurance business in this state. While the demurrers admit all allegations of fact in the amended complaints, they do not admit the truth of

conclusions of law. The allegation as to the want of authority of the plaintiff to do a reinsurance business in this state comes within this latter class of allegations and is not admitted by demurrer. The section of the Constitution of this state under which the tax was levied against the plaintiff is not therefore violative of the provisions of the fourteenth amendment of the federal Constitution which prohibits the taking of property without due process of law in that it permits the levying of a tax against plaintiff on account of a franchise not granted to plaintiff or exercised by it in this state. As we have seen, plaintiff has enjoyed and exercised this franchise during the entire time involved in these actions.

Plaintiff further claims that this section of the federal Constitution is violated in that the tax officials of this state in computing the tax against the plaintiff, included its reinsurance business, and thereby denied to plaintiff the equal protection of the law. Plaintiff bases this claim upon its statement that under the law in force during the years mentioned, the rate of taxation against all persons and companies doing an insurance business was fixed at 2.6 per cent of their gross premiums, and that by compelling plaintiff to pay a tax of 2.6 per cent based upon gross premiums received by it, not only from its general insurance business but also upon its reinsurance business, such tax amounted to more than 5.6 per cent of its gross premiums received from its general insurance business. Therefore, plaintiff claims that other insurance companies which transact business in this state but do not accept reinsurance business are only required to pay a tax equal to 2.6 per cent of their gross premiums while plaintiff is required to pay a tax equal to 5.6 per cent of its gross premiums. To state this proposition is to show its fallacy. Plaintiff is only required to pay a tax equal to 2.6 per cent of its gross premiums received from its entire business which, of course, includes its reinsurance business. All other companies accepting reinsurance business pay at the same rate, and companies which do not accept reinsurance pay the same tax based upon the business transacted by them. There is, therefore, no discrimination against the plaintiff as it is taxed at the same rate at which others engaged in a similar business are taxed.

Article XII, section 14 (b) of the Constitution of this state permits a deduction of reinsurance premiums from

the amount of the gross premiums received by an insurance company doing business in this state, for the purpose of computing the amount of taxes to be paid by said company. The evident purpose and intent of this provision of the Constitution are to avoid double taxation without any loss of revenue to the state. This deduction can only be made when the company which reinsures is "authorized to do business in this state". We have shown that the plaintiff was during the years herein involved, authorized to do not [fol. 61] only a life, accident and health insurance business, but a reinsurance business in this state. Plaintiff's business in reinsurance clearly came within the terms of the constitutional section which permitted a deduction from gross premiums of premiums paid for reinsurance. Plaintiff undoubtedly received a benefit from this deduction as the companies whose risks it has reinsured, being relieved of taxes to the extent of the business transacted with plaintiff, could pay to plaintiff a higher premium than they could have paid had this deduction not been made. On the other hand, if it should be held that plaintiff is not liable for this tax, then no deduction should be made to the companies with which the plaintiff is doing a reinsurance business, with the result that these companies would not be able to pay to the plaintiff the rates which it is now receiving. In such a case, it would be necessary for the plaintiff either to refuse this business or to reduce its premiums if it expected to hold this reinsurance business. We, however, are of the opinion that, as the plaintiff was authorized to do reinsurance business in this state during the entire time at which the tax against it was levied, the state officials in levying the tax for those years correctly deducted from the gross premiums of the companies reinsuring with the plaintiff, the premiums paid to plaintiff, and that the plaintiff was liable for the tax computed upon its entire business transacted during those years, including its reinsurance of risks to property situated in this state.

The judgments are affirmed.

Curtis, J.

We concur: Edmonds, J. Shenk, J. Thompson, J. Langdon, J.

[fol. 62] IN SUPREME COURT OF CALIFORNIA, BANK

San Francisco, No. 15724

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corp.), Plaintiff, Appellant,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant, Respondent

On Appeal from the Superior Court in and for the City and County of San Francisco

JUDGMENT—April 26, 1937

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is Ordered, Adjudged, and Decreed by the Court that the Judgment of the Superior Court in and for the City and County of San Francisco in the above entitled cause, be and the same is hereby affirmed. Respondent to recover costs on appeal.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 63] IN SUPERME COURT OF CALIFORNIA, BANK

San Francisco, No. 15725

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corp.), Plaintiff, Appellant,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California, Defendant, Respondent

On Appeal from the Superior Court in and for the City and County of San Francisco

JUDGMENT—April 26, 1937

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all

and singular the law and premises having been fully considered,

It is Ordered, Adjudged, and Decreed by the Court that the Judgment of the Superior Court in and for the City and County of San Francisco in the above entitled cause, be and the same is hereby affirmed. Respondent to recover costs on appeal.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 64] IN SUPREME COURT OF CALIFORNIA

S. F. No. 15724, S. F. No. 15725 (Consolidated Cases)

[Titles omitted]

PETITION FOR APPEAL—Filed July 21, 1937

To the Chief Justice of the Supreme Court of the State of California:

Connecticut General Life Insurance Company, a Connecticut corporation (hereinafter called Conn. General), respectfully shows that:

I

Conn. General is the appellant in the above entitled causes.

II

The appeal in said causes was from judgments rendered in civil actions on the 10th day of June, 1936, by the Superior Court of the State of California, in and for the City and County of San Francisco against Conn. General and in favor of the above named respondent, after said Court had [fol. 65] sustained respondent's general demurrers to Conn. General's amended complaints without leave to amend, and dismissed the complaints.

III

On appeal by Conn. General from said judgments to the Supreme Court of California (said Court being the highest court of law and equity in said State in which a decision of the matter in controversy could be had), the judgments appealed from were in all respects affirmed by the final

judgments entered in the Supreme Court of California on the 27th day of May, 1937, the opinion being filed on the 26th day of April, 1937.

IV

There is error in the final judgments and the record of proceedings in these causes in the said Supreme Court of California, whereby Conn. General is aggrieved in that in the decisions and judgments of said Court there was drawn in question the validity of Article XIII, Section 14 (b), of the Constitution of California, on the ground that as interpreted and applied by the State tax authorities a tax was levied under said provision of the State Constitution on account of property of Conn. General outside the jurisdiction of California, on account of a franchise not granted by California, on account of business not done in California, and on account of a contract executed wholly and to be and in fact performed wholly outside that State; that under Article XIII, Section 14 (b), of the Constitution of California, as applied by the State tax authorities, Conn. General was denied the equal protection of its laws by the State of California; all of which thereby rendered said provision of said Constitution repugnant to and in contravention of the Fourteenth Amendment to the Constitution of the United States; and that the decisions and judgments of said Court sustained said tax and the interpre-[fol. 66] tation of said provision of the State Constitution, as applied by the State tax authorities, and said Court rendered its decisions in favor of the legality of said tax and the validity of said provision of said State Constitution, as applied by said State tax authorities.

Wherefore, Conn. General prays for the allowance of an appeal from the aforesaid final judgments of the Supreme Court of the State of California against Conn. General to the Supreme Court of the United States, in order that the decisions and judgments of the Supreme Court of California may be examined and reversed, and further prays that a transcript of the record, proceedings and papers in these causes, duly authenticated by the Clerk of the Supreme Court of California, may be sent to the Supreme Court of the United States, as provided by law.

Conn. General further prays that the appeal herein may be a supersedeas; that an order be made fixing the security

required; that on approval of such security, such appeal may be allowed as a supersedeas.

The errors upon which Conn. General claims to be entitled to an appeal are those hereinbefore indicated and which are more fully set out in the assignment of errors filed herewith.

Dated this 21st day of July, 1937.

Raymond Benjamin, William Marshall Bullitt, Hartley F. Peart, Attorneys for Appellant and Petitioner.

[File endorsement omitted.]

[fol. 67] IN SUPREME COURT OF CALIFORNIA

S. F. No. 15724, S. F. No. 15725 (Consolidated Cases)

[Titles omitted]

ASSIGNMENT OF ERRORS—Filed July 21, 1937

Comes now the appellant above named, Connecticut General Life Insurance Company, a corporation of the State of Connecticut, and as appellant to the Supreme Court of the United States from the judgments and decisions heretofore entered herein, assigns as errors:

1. That the Supreme Court of California erred in refusing to reverse the judgments of the Superior Court of the State of California in and for the City and County of San Francisco.

2. That the Supreme Court of California erred in holding that under Article XIII, Section 14 (b), of the Constitution of California, and under the general laws of California, Conn. General was estopped to deny (this estoppel doctrine was set out in the former opinion and reaffirmed by reference in the opinion in these cases) that Conn. General's reinsurance business admittedly not done in California was done in California until Conn. General could show that the original or ceding company had paid the full tax on those premiums without exemption; and that the tax imposed [fol. 68] under this doctrine of "taxation of estoppel," as applied to Conn. General's reinsurance business admittedly done wholly outside the State of California, does not result

in the taking by California of Conn. General's property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

3. That the Supreme Court of California erred in holding that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax on account of its reinsurance business not done in California; and that by such tax so levied California does not take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

4. That the Supreme Court of California erred in holding that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax upon reinsurance considerations never situated in California but received by mail by Conn. General at its Home Office in Hartford, Connecticut; and that the tax so levied was not a tax on property not located in the State of California; and that California does not thereby take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

5. That the Supreme Court of California erred in holding that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax on account of contracts or treaties executed wholly and to be, and in fact, performed wholly outside that State; and that by such tax so levied California does not take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 69] 6. That the Supreme Court of California erred in holding that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax on account of business not done in California, on account of contracts executed wholly and to be, and in fact, performed wholly outside that State; and that by such tax so levied California does not take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

7. That the Supreme Court of California erred in holding that the reinsurance transactions in question were con-

ducted by Conn. General in pursuance of a franchise or privilege granted Conn. General by California (when in fact California granted Conn. General, at most, a franchise or privilege to conduct reinsurance business only in California and not elsewhere, and this appeal concerns only business done elsewhere); and that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax on account of this alleged franchise or privilege; and that as so construed or applied California does not thereby take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

8. That the Supreme Court of California erred in holding that California had power to grant a franchise or privilege to Conn. General to conduct the reinsurance transactions in question, that it had granted a franchise or privilege authorizing Conn. General to conduct said reinsurance transactions (all of which were transactions executed and performed wholly outside of California), and that said alleged franchise or privilege empowered California to levy and collect a tax upon Conn. General measured by gross [fol. 70] premiums received from the aforesaid reinsurance transactions; and erred in holding that Conn. General, in doing the aforesaid reinsurance business outside of California, was exercising a privilege in California, and that this business was done under a franchise granted by California, and that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay said tax on account of this alleged franchise or privilege; and that as so construed and applied California does not thereby take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

9. That the Supreme Court of California erred in holding that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax on account of business not done in California, and that this tax was not a tax on account of a franchise not granted by California, nor a tax on account of a privilege not exercised in California; and that California does not thereby take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

10. That the Supreme Court of California erred in holding that Article XIII, Section 14 (b), of the Constitution of California required Conn. General to pay a tax in excess of 5.4% (during each of the two years involved) of the net premiums received by Conn. General on account of business done in California when other life insurance companies organized under laws other than California and similarly situated and authorized to do business in California but which did not accept reinsurance business were required to pay a tax amounting only to 2.6% of the net premiums received on account of business done in California; and that the tax so levied on Conn. General was not arbitrary or discrimina-
[fol. 71] tory, nor did California thereby deny to Conn. General the equal protection of its laws in violation of the Fourteenth Amendment to the Constitution of the United States.

PRAYER FOR REVERSAL

For these errors, said appellant prays that the judgment of the Supreme Court of the State of California be reversed and judgment ordered granting to the appellant the relief prayed for in its appeal to the Supreme Court of the State of California from the tax assessments of which complaint is made.

Connecticut General Life Insurance Company, Appellant, Raymond Benjamin, William Marshall Bullitt, Hartley F. Peart, Attorneys for Appellant.

[File endorsement omitted.]

[fol. 72] IN SUPREME COURT OF CALIFORNIA

S. F. No. 15724, S. F. No. 15725 (Consolidated Cases)

[Titles omitted]

ORDER ALLOWING APPEAL—Filed July 21, 1937

On this 21st day of July, 1937, on reading the petition of Connecticut General Life Insurance Company, a corporation, the appellant herein (hereinafter called Conn. General), praying for the issuance of an order herein allowing

its appeal to the Supreme Court of the United States from the Supreme Court of California, and it appearing from the said petition, assignment of errors, statement as to the jurisdiction of the Supreme Court of the United States and the record of the above entitled cause that there was drawn in question the illegality of a tax levied, under Article XIII, Section 14 (b) of the Constitution of the State of California, upon Conn. General by the taxing authorities of California by reason of the inclusion in the gross premiums, (which constituted the measure of the amount of the tax levied upon Conn. General), of certain reinsurance considerations received by Conn. Gen- [fol.73] eral in Hartford, Connecticut from insurance companies whose principal places of business were in various states of the Union, and with whom Conn. General had in Hartford, Connecticut entered into contracts or treaties of reinsurance by which Conn. General agreed to indemnify said reinsured companies for a part or all of the liability which said reinsured companies might incur under one or more of the policies or contracts of life insurance of the reinsured companies issued by the reinsured companies to residents of the State of California (and residents of other states); and Conn. General having contended before the Supreme Court of California that said tax so levied as aforesaid was in fact a tax on property of appellant located without the jurisdiction of the State of California, was a tax on account of business not done in California, was a tax on account of contracts executed wholly and to be performed and in fact performed wholly without the boundaries of California, was a tax on account of a franchise not granted by California, was a tax on account of a privilege not exercised by Conn. General in California; and as construed and applied—California, under the aforesaid constitutional provision denied to Conn. General the equal protection of its laws, all in violation of the Fourteenth Amendment to the Constitution of the United States; and the decision of this Court considered that matter so urged by Conn. General and decided that neither said tax, nor said provision of the Constitution of the State of California, as interpreted and applied by the State tax authorities, was repugnant to the Fourteenth Amendment to the Constitution of the United States, and that said decision was in favor of the legality of said tax and of said provision

of the Constitution of California, as interpreted and applied [fol. 74] by said tax authorities.

Now, Therefore, it is Ordered by the undersigned, the Acting Chief Justice of the Supreme Court of the State of California, that said appeal be and the same is hereby allowed; and

It is Further Ordered that the appellant, Connecticut General Life Insurance Company, executed to the respondent, Charles G. Johnson, as Treasurer of the State of California, its bond with surety to be approved by the undersigned, in the sum of Five hundred (500.00) Dollars, conditioned according to law; and

It is Further Ordered that the Clerk of this Court within thirty (30) days from this date, make and transmit to the Clerk of the United States Supreme Court, under his hand and the seal of this Court, a transcript of the record and proceedings herein.

Dated July 21, 1937.

John W. Shenk, Acting chief Justice of the Supreme Court of the State of California.

[File endorsement omitted.]

[fols. 75-76] Citation, in usual form, showing service on Neil Cunningham, filed July 23, 1937, omitted in printing.

[fols. 77-79] Bond on Appeal for $500.00, approved and filed July 21, 1937, omitted in printing.

[fol. 80] IN SUPREME COURT OF CALIFORNIA

S. F. No. 15724, S. F. No. 15725 (Consolidated Cases)

[Titles omitted]

STIPULATION CONCERNING CONTENTS OF TRANSCRIPT OF RECORD—Filed July 23, 1937

To the Clerk of the Supreme Court of the State of California:

Pursuant to Rule 10, paragraph 2, of the Rules of the Supreme Court of the United States, you will please pre-

pare, transmit and deliver to the Clerk of the Supreme Court of the United States copies, duly certified as correct, of the following documents and records in the above entitled consolidated cases in connection with the appeal of Connecticut General Life Insurance Company, a corporation, heretofore allowed by the Chief Justice of the Supreme Court of the State of California, and heretofore filed by the said Connecticut General Life Insurance Company, a corporation:

1. The amended complaint; demurrer; minute order sustaining demurrer to complaint; judgment; notice of appeal; stipulation to transcript on appeal; and Clerk's [fol. 81] certificates to judgment roll and to transcript on appeal, all of which are contained in that certain transcript on appeal heretofore filed in the case of Connecticut General Life Insurance Company, a corporation, v. Charles G. Johnson, as Treasurer of the State of California, S. F. No. 15724.

2. The amended complaint; demurrer; minute order sustaining demurrer to complaint; judgment; notice of appeal; stipulation to transcript on appeal; and Clerk's certificates to judgment roll and to transcript on appeal, all of which are contained in that certain transcript on appeal heretofore filed in the case of Connecticut General Life Insurance Company, a corporation, v. Charles G. Johnson, as Treasurer of the State of California, S. F. No. 15725.

3. Stipulation and order consolidating appeals in re. S. F. Nos. 15724 and 15725, heretofore filed on August 29, 1936.

4. The opinion and decision of the Supreme Court of the State of California affirming the judgments of the Superior Court of the State of California in and for the City and County of San Francisco in the above entitled consolidated cases rendered April 26, 1937, and reported in California Decisions, Vol. 93, pp. 399-403.

5. Remittitur dated May 27, 1937, issued by the Supreme Court of the State of California to the Superior Court of the State of California, in and for the City and County of San Francisco.

6. The following papers filed with the Clerk of the Supreme Court of the State of California in connection with the appeal of Connecticut General Life Insurance Company, a corporation, plaintiff and appellant in the above entitled

consolidated cases, to the Supreme Court of the United States:

[fol. 82] (a) Petition for appeal;

(b) Assignment of errors;

(c) Separate statement as to jurisdiction, required by Paragraph 1 of Rule 12, as amended, of the Supreme Court of the United States;

(d) Order allowing appeal;

(e) Notice and statement to appellee pursuant to Rule 12;

(f) Admission of service of the papers above enumerated in subparagraphs (a) to (e) hereof;

(g) Citation (with affidavit of service);

(h) Bond.

7. This stipulation.

Dated July 21st, 1937.

U. S. Webb, Attorney General of the State of California; Neil Cunningham, Deputy Attorney General of the State of California, Attorneys for Charles G. Johnson, as Treasurer of the State of California, Appellee. Raymond Benjamin, William Marshall Bullitt, Hartley F. Peart, Attorneys for Connecticut General Life Insurance Company, a Corporation, Appellant.

[File endorsement omitted.]

[fol. 83] IN SUPREME COURT OF THE UNITED STATES

APPELLANT'S STATEMENT OF THE POINTS ON WHICH IT INTENDS TO RELY AND OF THE PARTS OF THE RECORD DESIGNATED TO BE PRINTED—Filed August 19, 1937

To the Clerk of the Supreme Court of the United States:

Appellant, Connecticut General Life Insurance Company, a corporation (hereinafter called Conn. General), hereby files this, its definite statement of the points on which it intends to rely and of the parts of the record which it thinks necessary for the consideration thereof, pursuant to the requirements of Rule 13, Paragraph 9 of the Rules of the Supreme Court of the United States.

[fol. 84] STATEMENT OF THE POINTS ON WHICH CONN. GENERAL INTENDS TO RELY

1. The Supreme Court of California erred in holding that under Art. XIII, Sec. 14(b) of the Constitution of California and under the general laws of California, Conn. General was estopped to deny that its reinsurance business admittedly not done in California was done in California until Conn. General could show that the original or ceding company had paid the full tax on those premiums without exemption; and that the tax imposed under this doctrine of "taxation by estoppel" as applied to Conn. General's reinsurance business admittedly done wholly outside of the State of California, results in the taking by California of Conn. General's property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

2. Art. XIII, Sec. 14(b) of the Constitution of California, which the Supreme Court of California has held requires Conn. General to pay a tax on account of its reinsurance business not done in California, is as so construed and applied in violation of and repugnant to the Fourteenth Amendment to the Constitution of the United States and results in the taking by California of the property of Conn. General without due process of law in violation of said Fourteenth Amendment.

3. The Supreme Court of California erred in holding that Art. XIII, Sec. 14(b) of the Constitution of California required Conn. General to pay a tax upon reinsurance considerations never situated in California, but received by mail by Conn. General at its home office in Hartford, Con-
[fol. 85] necticut; and that the tax so levied was in fact a tax on property not located in the State of California, so that California thereby took the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

4. The Supreme Court of California erred in holding that Art. XIII, Sec. 14(b) of the Constitution of California required Conn. General to pay a tax on account of contracts or treaties executed wholly and to be, and in fact, performed wholly outside that state; and that by such tax so levied, California has taken the property of Conn. General

without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of California erred in holding that Art. XIII, Sec. 14(b) of the Constitution of California required Conn. General to pay a tax on account of business not done in California, on account of contracts executed wholly and to be, and in fact, performed wholly outside of that state; and said Supreme Court of California erred in holding that by such tax so levied California does not take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

6. The Supreme Court of California erred in holding that the reinsurance transactions in question were conducted by Conn. General in pursuance of a franchise or privilege granted Conn. General by California (when in fact California granted Conn. General, at most, a franchise or privilege to conduct reinsurance business only in California [fol. 86] and not elsewhere, and this appeal concerns only business done elsewhere); and said Supreme Court of California erred in holding that Art. XIII, Sec. 14(b) of the Constitution of California required Conn. General to pay a tax on account of this alleged franchise or privilege; and further erred in holding that as so construed or applied California does not thereby take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

6. That California had no power to grant a franchise or privilege to Conn. General to conduct reinsurance transactions wholly outside of the State of California and that no franchise or privilege which the State of California could purport to grant to Conn. General authorizing it to conduct reinsurance transactions outside of said state could authorize California to levy and collect a tax upon Conn. General measured by gross premiums received from such reinsurance transactions.

7. The Supreme Court of California erred in holding that California had power to grant a franchise or privilege to Conn. General to conduct the reinsurance transactions in question, that it had granted a franchise or privilege authorizing Conn. General to conduct said reinsurance

transactions (all of which were transactions executed and performed wholly outside of California) and that said alleged franchise or privilege empowered California to levy and collect a tax upon Conn. General measured by gross premiums received from the aforesaid reinsurance transactions; and erred in holding that Conn. General, in doing [fol. 87] the aforesaid reinsurance business outside of California, was exercising a privilege in California, and that this business was done under a franchise granted by California, and that Art. XIII, Sec. 14(b) of the Constitution of California required Conn. General to pay said tax on account of this alleged franchise or privilege; and that as so construed and applied, California does not thereby take the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

8. Art. XIII, Sec. 14(b) of the Constitution of California as construed by the Supreme Court of California requires Conn. General to pay a tax on account of business not done in California, on account of a franchise not granted by California, and on account of a privilege not exercised in California, and therefore California has taken the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

9. The Supreme Court of California erred in holding that Art. XIII, Sec. 14(b) of the Constitution of California required Conn. General to pay a tax in excess of 5.4% of the net premiums received by Conn. General on account of business done in California when other life insurance companies organized under laws other than California and similarly situated and authorized to do business in California but which did not accept reinsurance business, were required to pay a tax amounting only to 2.6% of the net premiums received on account of business done in Cali- [fol. 88] fornia; and in holding that the tax so levied on Conn. General was not arbitrary or discriminatory and in further holding that California did not thereby deny to Conn. General the equal protection of its laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The assignment of errors heretofore filed by Conn. General with the Clerk of the Supreme Court of California con-

tains in full all of the points upon which Conn. General intends to rely on this appeal. Said assignment of errors is hereby expressly referred to by Conn. General and is hereby incorporated herein by reference for all purposes.

Designation of the Parts of the Record Which Conn. General Deems Necessary for the Consideration of the Foregoing Points

Pursuant to Rule 13, Paragraph 9 of the Rules of the Supreme Court of the United States, Conn. General hereby designates the parts of the record in the above entitled action which it thinks necessary for the consideration of the points above set forth:

The entire record docketed in the above entitled causes with the exception of captions, titles and verifications.

Dated August 17, 1937.

Raymond Benjamin. William Marshall Bullitt. Hartley F. Peart.

Receipt of a copy of the foregoing statement is hereby admitted this 17th day of August, 1937.

U. S. Webb, Attorney General, by Neil Cunningham, James J. Arditto, Deputy Attorney- General.

[fol. 89] [File endorsement omitted.]

Endorsed: Enter William Marshall Bullitt. File No. 41,797. California Supreme Court. Term No. 216. Connecticut General Life Insurance Company, appellant, vs. Charles G. Johnson, as Treasurer of the State of California. Filed August 14, 1937. Term No. 316, O. T., 1937.

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 316

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,

Appellant,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

STATEMENT AS TO JURISDICTION

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Statutes Cited.

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IN THE

SUPREME COURT OF THE STATE OF CALIFORNIA

(CONSOLIDATED CASES.)

S. F. No. 15724

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, A CORPORATION,

Plaintiff and Appellant,

vs.

CHARLES G. JOHNSON, AS TREASURER OF THE STATE OF CALIFORNIA.

Defendant and Respondent.

S. F. No. 15725

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, A CORPORATION,

Plaintiff and Appellant,

vs.

CHARLES G. JOHNSON, AS TREASURER OF THE STATE OF CALIFORNIA.

Defendant and Respondent.

SEPARATE STATEMENT AS TO JURISDICTION REQUIRED BY PARAGRAPH 1 OF RULE 12, AS AMENDED, OF THE SUPREME COURT OF THE UNITED STATES.

Considering itself aggrieved by the final judgments and decisions of the Supreme Court of California in the above

entitled causes, rendered on the 27th day of May, 1937 (opinion filed April 26, 1937; judgments final with filing of remittiturs, May 27, 1937), the appellant therein, a Connecticut corporation (hereinafter called Conn. General) hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond; and Conn. General submits this, its Separate Statement as to Jurisdiction Required by Paragraph 1 of Rule 12, as amended.

California Statute Involved.

The consolidated cases draw into question the validity of Article XIII, Section 14 (b) of the Constitution of California (there is no official citation thereto) as construed and applied by the State tax authorities (the Insurance Commissioner and the State Board of Equalization) in the taxation of Conn. General (a foreign corporation admitted to do business in California) and Conn. General's property, on the ground that so construed and applied this constitutional provision is repugnant to and in violation of the Fourteenth Amendment to the Constitution of the United States.

Article XIII, Section 14 (b) of the Constitution of California is as follows:

> "(b) Taxes on insurance companies. Every insurance company or association doing business in this state shall annually pay to the state a tax of one and one-half per cent (raised to 2.6% by the legislature under authority of a subsequent paragraph in Section 14—Conn. General's note.) upon the amount of the gross premiums received upon its business done in this state, less return premiums and reinsurance in companies or associations authorized to do business in this state; provided, that there shall be deducted from said one and one-half per cent upon the gross premiums the amount of any county and municipal taxes paid by such companies on real estate owned by them in this

state. This tax shall be in lieu of all other taxes and licenses, state, county and municipal, upon the property of such companies, except county and municipal taxes on real estate, and except as otherwise in this section provided; provided, that when by the laws of any other state or country, any taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations or prohibitions, are imposed on insurance companies of this state, doing business in such other state or country, or upon their agents therein, in excess of such taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations or prohibitions, imposed upon insurance companies of such other state or country, so long as such laws continue in force, the same obligations and prohibitions of whatsoever kind may be imposed by the legislature upon insurance companies of such other state or country doing business in this state." (Constitution of California, Treadwell, 1931, p. 776-777.)

Judgment or Decree Final.

The decision rendered by said Supreme Court of California was the final judgment or decree in the highest court of California in which a decision in the suit could be had; there was drawn in question the validity of Article XIII, Section 14 (b) of the Constitution of California, and the decision was in favor of the validity of this constitutional provision as construed and applied, as against the contention of Conn. General that the aforesaid constitutional provision is repugnant to and in violation of the Fourteenth Amendment to the Constitution of the United States.

Statutory Basis of Jurisdiction.

In accordance with the Rules of the Supreme Court of the United States, Conn. General respectfully shows this Court that the case is one in which, under the legislation in force when the act of January 31, 1928 (45 Stat. 54), was passed, to wit: under Sec. 237(a) of the Judicial Code, 28 U. S. C., Sec. 344(a), a review could be had in the Supreme

Court of the United States on a writ of error as a matter of right.

Conflict with Supreme Court Cases.

The jurisdiction of the Supreme Court of the United States attaches to this appeal by reason of the fact that, as construed and applied by the tax authorities of California and by the final decision of the Supreme Court of California, Conn. General is taxed by California on account of—

(1) Business not done in California,

(2) Contracts executed wholly and to be performed, and in fact performed wholly without the boundaries of California,

(3) A franchise not granted to Conn. General by California, and

(4) A privilege not exercised by Conn. General within that State;

as a result, the tax authorities of California have taken the property of Conn. General without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States:

St. Louis Cotton Compress Co. v. *Arkansas*, 260 U. S. 346;

Allgeyer v. *Louisiana*, 165 U. S. 578;

Compania General de Tabacos v. *Collector of Int. Revenue*, 275 U. S. 87;

Alaska Packers Assn. v. *Industrial Accident Commission*, 294 U. S. 532;

Provident Savings Life Soc. v. *Kentucky*, 239 U. S. 103.

The jurisdiction of the Supreme Court of the United States likewise attaches to this appeal by reason of the fact that as construed and applied by the tax authorities of California, and by the final decision of the Supreme Court of California, the property of Conn. General outside

the jurisdiction of California has been taxed for the benefit of California by the levy of a tax of 2.6% upon reinsurance considerations of Conn. General derived from business done wholly outside of the State of California; this purporting to be a tax authorized by law to be levied and collected solely on the property of Conn. General located within the State of California; and as a result, California's tax authorities have taxed property of Conn. General outside the jurisdiction of that State in violation of the Fourteenth Amendment to the Constitution of the United States:

Frick v. *Pennsylvania*, 268 U. S. 473;

Union Refrigerator Transit Co. v. *Kentucky*, 199 U. S. 194.

This appeal involves solely taxes levied on account of business not done in California. Conn. General has paid without protest all taxes on account of business done in California.

Opinions Below.

Pursuant to the Rules of the Supreme Court of the United States, Conn. General has attached hereto, and hereby incorporates a copy of each of the following:

(a) The opinion of the Supreme Court of the State of California delivered and filed upon the rendering of the judgments hereby sought to be reviewed (Vol. 93 Cal. Dec. 4650, p. 399, 67 Pac. (2d) 675).

(b) The opinion of the Supreme Court of California delivered and filed upon the rendering of the judgments in earlier actions between the same parties, which involved the same constitutional provision as these causes, but concerned taxes paid in former years, 3 Cal. (2d) 83, 43 Pac. (2d) 278 (appeal of Conn. General to the Supreme Court of the United States was dismissed "for the want of a properly presented federal question", 296 U. S. 535).

Federal Questions Raised.

The Federal questions sought to be reviewed by the petition for appeal filed herewith were raised in each of the above entitled causes, in the first instance, by the amended complaints; in the court of first instance, the Superior Court of the State of California in and for the City and County of San Francisco. The Federal questions sought to be reviewed were presented to that Court during oral argument after appellee had interposed a general demurrer to the amended complaint in each of the above entitled causes. In each case the court of first instance sustained the general demurrer without leave to amend, and dismissed the amended complaints. On appeal, before the Supreme Court of the State of California, the Federal questions here sought to be reviewed were presented in the amended complaints, in the briefs of Conn. General and in the oral arguments of both parties before the Court. The Supreme Court of California affirmed the judgments of the Superior Court of California in and for the City and County of San Francisco and passed upon the Federal questions in the manner set forth in the opinion of the Supreme Court of California, a copy of which is attached hereto.

The allegations of Conn. General's amended complaint in No. 15724 (No. 15725 is identical except for dates and amounts) which present Federal questions and which have been held by the above mentioned courts of California not to state a cause of action, are as follows:

"XIV.

"That in assessing and levying taxes upon the property of plaintiff as authorized by subdivision (b) of Section 14 of Article XIII of the Constitution of California, the taxing authorities of said state, to-wit, the

State Board of Equalization, have adopted and followed a construction of said Section of said State Constitution, which results in a tax on plaintiff's property and franchise not located in said state and in violation of plaintiff's rights under the Fourteenth Amendment of the Constitution of the United States. Said State Board of Equalization in computing the tax upon said reinsurance considerations levied a tax on account of business not done in the State of California, and on contracts executed wholly and to be performed and in fact performed wholly without the boundaries of the State of California. If said Subdivision (b) of Section 14 of Article XIII of the Constitution of California is construed so as to tax plaintiff on the basis of the reinsurance considerations received as aforesaid, then this provision is invalid and invalid as to plaintiff as being in conflict with and in violation of the Constitution of the United States and particularly the Fourteenth Amendment thereof and that section of the Fourteenth Amendment prohibiting the taking of property without due process of law.

"XV.

"If Subdivision (b) of Section 14, Article XIII of the Constitution of California taxes plaintiff on the basis of its reinsurance business conducted as aforesaid, then it is invalid as to plaintiff as in conflict with the Fourteenth Amendment to the Constitution of the United States and particularly that section of the Fourteenth Amendment prohibiting the taking of property without due process of law in that a tax is levied against plaintiff on account of a franchise not granted to plaintiff by the State of California and a privilege not exercised by plaintiff within the State of California, plaintiff being authorized to conduct and conducting in the State of California only the business of life and accident and health insurance in accordance with the certificates of authority from the State of California as hereinbefore referred to.

"XVI.

"In levying the aforementioned tax against plaintiff based on the reinsurance considerations received by plaintiff outside of the State of California, the state denies to plaintiff the equal protection of its laws contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States in that plaintiff is required because of the peculiar type and distribution of its business to pay to defendant for the year 1930 a tax of $20,593.40 for the privilege of doing business in the State of California. This tax is measured by the business which plaintiff in fact did in the State of California during 1930, to-wit, the receipt by plaintiff of net premiums in the amount of $375,460.04, represents a tax in excess of 5.6% of said net premiums, the operation of such tax as to plaintiff being highly discriminatory and otherwise violative of its rights under the Fourteenth Amendment of the Constitution of the United States, other life insurance companies organized under state laws other than California and authorized to do business in the State of California but not accepting reinsurance being required to pay a tax equal to 2.6% of net premiums received on California business."

Date of Judgments.

The judgments sought to be reviewed were rendered by the Supreme Court of California on the 27th day of May, 1937, and the application for appeal (petition for appeal) is presented to the Chief Justice of the Supreme Court of the State of California on this 21st day of July, 1937.

Connecticut General files herewith a more complete assignment of errors as to said final decision of the Supreme Court of California.

RAYMOND BENJAMIN,
WILLIAM MARSHALL BULLITT,
HARTLEY F. PEART,
Attorneys for Connecticut General Life Insurance Company, Appellant.

EXHIBIT "A".

California Decisions.

S. F. No. 15724. In Bank. April 26, 1937.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corporation), *Plaintiff and Appellant,*

v.

CHARLES G. JOHNSON, as Treasurer of the State of California, *Defendant and Respondent.*

S. F. No. 15725. In Bank. April 26, 1937.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corporation), *Plaintiff and Appellant,*

v.

CHARLES G. JOHNSON, as Treasurer of the State of California, *Defendant and Respondent.*

[1] INSURANCE — TAXATION — REINSURANCE — CONSTITUTIONAL LAW—DUE PROCESS.—The business of reinsurance is but a modification of ordinary insurance and is included in a certificate authorizing an insurance company to carry on any of the general lines of insurance mentioned in section 594 of the Political Code; and in these actions to recover taxes assessed against plaintiff company, plaintiff could not legally claim that the certificates of authority issued to it to transact the business of life, accident and health insurance did not authorize it to do a reinsurance business in such classes of insurance, and that a computation of said taxes on the basis of reinsurance, therefore, constituted the taking of property without due process of law, for the reason that reinsurance was not specifically set forth in said section 594 as a class of insurance for which a certificate of authority could be issued in this state.

[2] ID.—DEMURRERS—PLEADING—REINSURANCE—CONCLUSIONS OF LAW.—In such actions, while the demurrers admitted all allegations of fact in the amended complaints,

they did not admit the truth of conclusions of law; and the allegations in the amended complaints as to the want of authority of the plaintiff to do a reinsurance business in this state came within such latter class of allegation, and was not admitted by the demurrers.

[3] Id. — Taxation — Reinsurance — Classification — Equal Protection—Constitutional Law.—In such actions, where it appeared that plaintiff was only required to pay a tax equal to 2.6 per cent of its gross premiums received from its entire business, which included its reinsurance business, and that all other companies accepting reinsurance business paid at the same rate, and that companies which did not accept reinsurance paid the same tax based upon the business transacted by them, it could not be said that plaintiff was denied the equal protection of the law or that a discrimination existed against it.

[4] Id. — Taxation — Reinsurance. — In such actions, where the plaintiff was authorized to do reinsurance business in this state during the entire time at which the tax against it was levied, the state officials in levying the tax for those years correctly deducted from the gross premiums of the companies reinsuring with the plaintiff, the premiums paid to plaintiff, and plaintiff was liable for the tax computed upon its entire business transacted during those years, including its reinsurance of risks to property situated in this state.

Appeals by plaintiff from judgments of the Superior Court of the City and County of San Francisco, Frank T. Deasy, Judge, in actions to recover taxes. *Affirmed.*

For Appellant—Raymond Benjamin, Hartley F. Peart.
For Respondent—U. S. Webb, Attorney-General; Neil Cunningham, Deputy Attorney-General; James J. Arditto.

These two actions, while appealed separately, have been argued together, and as they present the same identical question, they may and will be considered in one opinion. The only difference in the two actions, is that in action S. F. No. 15724, the plaintiff seeks to recover taxes paid

for the calendar year 1930, while in action S. F. No. 15725 recovery is sought for the year 1931. These actions differ in no material respect from the two actions bearing the same title and reported in 3 Cal. (2d) 83, except as to the years during which the taxes involved accrued. In our decision in those actions we held that the taxes paid by plaintiff which it sought to recover in those actions, were legally levied and collected and the plaintiff was not entitled to recover any portion of the taxes so paid by it. As to all the questions involved in those appeals which were discussed and decided therein, we adhere to the conclusions reached by us in that decision.

The present actions were pending at the time the former cases were decided. On the going down of the remittitur in the former appeals, the plaintiff amended its complaints in the two instant actions by expressly pleading the fourteenth amendment to the Constitution of the United States and alleging that the assessment and levy of a tax against plaintiff on the basis of its reinsurance business transacted during the two years covered by the complaints in these actions violated the provisions of this section of the federal Constitution.

There are set forth in said amended complaints, three grounds upon which the plaintiff relies in support of its contention that the assessment and levy of said tax against it violated the fourteenth amendment of the United States Constitution. These grounds are now relied upon by the plaintiff in support of its appeals herein.

It is first contended that the state board of equalization in computing the tax upon the reinsurance business of plaintiff levied a tax on account of business not done in the state of California and on contracts executed wholly and performed entirely without this state. This contention was the basis of the plaintiff's argument upon the former appeals, and it was decided adversely to plaintiff. We see no good reason for restating our position upon this question as our former decision fully answers the present contention of plaintiff.

[1] It is next contended that the computation of said tax upon the basis of reinsurance done by plaintiff is violative

of said constitutional section, and is the taking of plaintiff's property without due process of law in that said tax is levied against plaintiff on account of a transaction and privilege not granted to plaintiff by the state of California and not exercised by the plaintiff within this state. Plaintiff alleges that the plaintiff during the years for which said tax was levied held a legal and valid certificate of authority issued by the officials of this state authorizing it to do and transact the business of life and accident and health insurance within this state. It further alleges that neither of these certificates of authority authorized plaintiff to transact in California any other type of insurance except the three types above mentioned, all of which are recognized as types of insurance under section 594 of the Political Code of the state of California.

This section of the code was amended in 1933, and in 1935 the Insurance Code was adopted, which superseded section 594 of the Political Code classifying insurance business. As these amendments were subsequent to the years during which the taxes herein involved accrued, the present actions are governed by the provisions of section 594 of the Political Code prior to its amendment in 1933. Neither the amendment of 1933 nor the provisions of the Insurance Code change the law in any material respect, in so far as it applies to any point raised in these actions, from what it was prior to the year 1933. Section 594 of the Political Code provides for some twenty different classes of insurance for which certificates of authority may be issued in this state. No mention is made of reinsurance in said section as a separate class of insurance which may be carried on in this state. This does not mean that the business of reinsurance may not be carried on in this state. It may mean, however, that the business of reinsurance is included in the respective classes of insurance enumerated in said section of the code. That is to say, that a certificate of authority to engage in the business of fire insurance includes the authority to engage in the business of fire reinsurance.

"Reinsurance contracts as a general rule, involve no legal principles essentially different from those applicable

to contracts generally, nor does the contract necessarily differ in form from original insurance. And reinsurance was a valid contract at common law and * * * has generally been regarded as a legitimate and valid contract; reinsurance now being generally practiced." (Cyclopedia of Insurance Law, Couch, vol. 1, p. 65, sec. 44.) Again, the same author makes the following statement: "An insurance company empowered 'to make contracts of insurance' or 'al' kinds of insurance against losses by fire', may make a contract of reinsurance. * * *". Vol. 8, p. 7393, sec. 2258.) We find the identical statement in Joyce on Insurance, volume 1, page 345, section 115.

The case of *New York Bowery Fire Insurance Company* v. *The New York Fire Insurance Company of New York*, 17 Wendell (N. Y.) 359, seems to be the foundation for the above statement quoted above from the works of the two well-known authors. In that case we find the question discussed as follows: "It is objected that these companies had no authority under their charters of incorporation to enter into the contract of re-assurance. By the 6th section of the Act incorporating the plaintiffs, Laws of 1832, p. 292, they have power 'to make contracts of insurance against loss by fire of any houses or buildings whatsoever, and of any goods, chattels or personal estate whatsoever'. By the 6th section of the Act incorporating the Bowery Co. Laws of 1833, p. 296, they have power 'to make all kinds of insurance against losses by fire, of any houses and buildings whatsoever; and also upon all goods, wares and merchandise whatsoever'. Re-assurance is but a modification of the contract of insurance, and is, I think, clearly included in the power of the plaintiffs, 'to make contracts of insurance', and of the defendants 'to make all kinds of insurance' against losses by fire. * * *"

Section 594 of the Political Code enumerates all the different classes of insurance authorized to be transacted in this state. It does not mention reinsurance. If reinsurance business is not included within one or more of the different classes of insurance mentioned in this code section, then there is no law in this state governing that class of insurance, and it might follow that that type of insurance busi-

ness is not permitted in this state. In the adoption of the Insurance Code in 1935, the insurance law of the state was rewritten, and in many instances material changes were made therein. Yet in this latest legislative enactment on the subject, we find no mention made of reinsurance as a separate and distinct type from ordinary insurance although other references are made therein to the business of reinsurance. In fact, the Insurance Code follows verbatim the classification of the different classes of insurance enumerated in section 594, Political Code, prior to its repeal. It is hardly reasonable that the commission which framed the Insurance Code, and the legislature which enacted the bill proposed by the commission into law, as well as section 594, Political Code, and its amendment, intended to leave the business of reinsurance without regulation in this state. The only reasonable conclusion to be drawn from their actions, as well as from the authorities cited above, is that the business of reinsurance is but a modification of ordinary insurance and is included in a certificate authorizing an insurance company to carry on any of the general lines of insurance mentioned in the statute. The plaintiff, therefore, cannot legally claim that during the times mentioned in the amended complaints in these actions, the certificates of authority issued to it to transact the business of life, accident and health insurance, did not authorize it to do a reinsurance business in these three classes of insurance.

[2] It is true that plaintiff has alleged that it had no certificate of authority to transact reinsurance business in this state. While the demurrers admit all allegations of fact in the amended complaints, they do not admit the truth of conclusions of law. The allegation as to the want of authority of the plaintiff to do a reinsurance business in this state comes within this latter class of allegations and is not admitted by demurrer. The section of the Constitution of this state under which the tax was levied against the plaintiff is not therefore violative of the provisions of the fourteenth amendment of the federal Constitution which prohibits the taking of property without due process of law in that it permits the levying of a tax against

plaintiff on account of a franchise not granted to plaintiff or exercised by it in this state. As we have seen, plaintiff has enjoyed and exercised this franchise during the entire time involved in these actions.

[3] Plaintiff further claims that this section of the federal Constitution is violated in that the tax officials of this state in computing the tax against the plaintiff, included its reinsurance business, and thereby denied to plaintiff the equal protection of the law. Plaintiff bases this claim upon its statement that under the law in force during the years mentioned, the rate of taxation against all persons and companies doing an insurance business was fixed at 2.6 per cent of their gross premiums, and that by compelling plaintiff to pay a tax of 2.6 per cent based upon gross premiums received by it, not only from its general insurance business but also upon its reinsurance business, such tax amounted to more than 5.6 per cent of its gross premiums received from its general insurance business. Therefore, plaintiff claims that other insurance companies which transact business in this state but do not accept reinsurance business are only required to pay a tax equal to 2.6 per cent of their gross premiums while plaintiff is required to pay a tax equal to 5.6 per cent of its gross premiums. To state this proposition is to show its fallacy. Plaintiff is only required to pay a tax equal to 2.6 per cent of its gross premiums received from its entire business which, of course, includes its reinsurance business. All other companies accepting reinsurance business pay at the at the same rate, and companies which do not accept reinsurance pay the same tax based upon the business transacted by them. There is, therefore, no discrimination against the plaintiff as it is taxed at the same rate at which others engaged in a similar business are taxed.

[4] Article XIII, section 14 (b) of the Constitution of this state permits a deduction of reinsurance premiums from the amount of the gross premiums received by an insurance company doing business in this state, for the purpose of computing the amount of taxes to be paid by said company. The evident purpose and intent of this provision of the Constitution are to avoid double taxation with-

out any loss of revenue to the state. This deduction can only be made when the company which reinsures is "authorized to do business in this state." We have shown that the plaintiff was during the years herein involved, authorized to do not only a life, accident and health insurance business, but a reinsurance business in this state. Plaintiff's business in reinsurance clearly came within the terms of the constitutional section which permitted a deduction from gross premiums of premiums paid for reinsurance. Plaintiff undoubtedly received a benefit from this deduction as the companies whose risks it has reinsured, being relieved of taxes to the extent of the business transacted with plaintiff, could pay to plaintiff a higher premium than they could have paid had this deduction not been made. On the other hand, if it should be held that plaintiff is not liable for this tax, then no deduction should be made to the companies with which the plaintiff is doing a reinsurance business, with the result that these companies would not be able to pay to the plaintiff the rates which it is now receiving. In such a case, it would be necessary for the plaintiff either to refuse this business or to reduce its premiums if it expected to hold this reinsurance business. We, however, are of the opinion that, as the plaintiff was authorized to do reinsurance business in this state during the entire time at which the tax against it was levied, the state officials in levying the tax for those years correctly deducted from the gross premiums of the companies reinsuring with the plaintiff, the premiums paid to plaintiff, and that the plaintiff was liable for the tax computed upon its entire business transacted during those years, including its reinsurance of risks to property situated in this state.

The judgments are affirmed.

CURTIS, *J.*

We concur:

EDMONDS, *J.*
SHENK, *J.*
THOMPSON, *J.*
LANGDON, *J.*

EXHIBIT "B".

California Decisions.

S. F. No. 14732. In Bank. April 2, 1935.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corporation), *Plaintiff and Appellant*,

v.

CHARLES G. JOHNSON, as Treasurer of the State of California, *Defendant and Respondent.*

S. F. No. 14733. In Bank. April 2, 1935.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY (a Corporation), *Plaintiff and Appellant*,

v.

CHARLES G. JOHNSON, as Treasurer of the State of California, *Defendant and Respondent.*

[1] TAXATION—FOREIGN INSURANCE CORPORATIONS—REINSURANCE—CONSTITUTIONAL LAW.—In these actions by a foreign insurance corporation to recover alleged overpayments of taxes levied on account of reinsurance premiums received by plaintiff in another state in respect to the reinsurance of other foreign companies which had issued policies in this state, in view of the intent to tax all gross premiums, as shown by section 14 (b) of article XIII of the Constitution, plaintiff was estopped to deny that the reinsurance was consummated in this state unless and until it could show that the original insurer had paid the full tax on gross premiums without exemption, including the claims of the state, if any, for retaliatory taxes; and where there was no such showing plaintiff was not entitled to recover the alleged overpayments.

Appeal by plaintiff from judgments of the Superior Court of the City and County of San Francisco, Franklin A. Griffin, Judge, in actions to recover alleged overpayments of taxes. *Affirmed.*

For Appellant—Raymond Benjamin, Hartley F. Peart.
For Respondent—U. S. Webb, Attorney-General; Neil Cunningham,

This cause is styled a consolidated action by plaintiff, a life insurance corporation, organized under the laws of the state of Connecticut, to recover from the state of California, through the treasurer thereof, certain sums alleged to be overpayments of taxes, made involuntarily under article XIII, section 14 (b) of the California Constitution, which states the rate base for the calculation of such taxes to be the total gross premiums received by the corporation during the period involved from insurance business done in this state. Defendant's demurrer to the complaint in each case was sustained without leave to amend and judgment passed for him. Plaintiff appealed.

The controversy arises over the propriety of the state's action in including within the tax base certain payments made without the state by original insurers to plaintiff at its home office, for reinsurance respecting risks assumed and policies issued and delivered in California. The case brings to the foreground the proper interpretation of the above mentioned section of the Constitution, which, so far as here material, reads:

"Every insurance company or association doing business in this state shall annually pay to the state a tax of • • • per cent upon the amount of the gross premiums received upon its business done in this state, less return premiums and reinsurance in companies or associations authorized to do business in this state; provided, that there shall be deducted from said • • • per cent upon the gross premiums the amount of any county and municipal taxes paid by such companies on real estate owned by them in this state. This tax shall be in lieu of all other taxes and licenses, state, county and municipal, upon the property of such companies, except county and municipal taxes on real estate, and except as otherwise in this section provided; provided, that when by the laws of any other state or country, any taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations or prohibitions, are imposed on insurance companies of this state,

doing business in such other state or country, or upon their agents therein, in excess of such taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations or prohibitions, imposed upon insurance companies of such other state or country, so long as such laws continue in force, the same obligations and prohibitions of whatsoever kind may be imposed by the legislature upon insurance companies of such other state or country doing business in this state."

[1] Appellant states the question involved as follows: "Is the money paid to plaintiff in Connecticut, under an agreement made in Connecticut, for indemnifying another insurance company organized under state laws other than California as against possible loss by that other insurance company under some insurance policy it has written and issued in California, taxable against plaintiff under this provision of the Constitution as 'gross premiums received upon its business done in this state'?"

The facts alleged in one of the complaints (the other being identical save as to the year involved) show plaintiff to be a life insurance corporation regularly organized under the laws of the state of Connecticut, with home office at Hartford, and duly authorized at all times herein to transact business in California. That during the year 1927 plaintiff, acting pursuant to agreements made in 1926 without the state of California, with certain other foreign insurance companies, did, by covenants executed wholly without the state of California, indemnify said insurers against possible loss in part upon insurance risks secured, written and issued in California and for payment therefor received at its home office certain sums commonly styled "reinsurance payments". That for these payments plaintiff issued no policies of insurance to the insurer companies nor to the policyholders and that, respecting said reinsurance, it performed no act of any kind and transacted no business of any kind in the state of California. That the insurance commissioner of California in 1928, and for the year ending December 31, 1927, required plaintiff to report all such sums received by it for such reinsurance. That such sums so reported for said year were, in the aggregate, $398,806, and

they were then added to the other items going to make up the total gross premiums for said year, making a grand total of $684,393.85, upon which the tax of 2.6 per cent. was computed, the amounts so added thus increasing the amount of the tax $10,316.98 over what it would otherwise have been. The latter sum was paid under protest and a prayer for its return, with interest, was made herein by plaintiff.

Our problem, as already intimated, is to determine whether the words "gross premiums received upon its business done in this state", include sums collected by one authorized company from another for reinsurance of risks in California where such contract is executed and carried into effect wholly without the state and substantially in the manner above set out.

A distinction, of course, exists between a contract of insurance and a contract of reinsurance. Our Civil Code has defined the nature of the contract of reinsurance as follows: "A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability of such original insurance (sec. 2646, Civil Code)."

"A reinsurance is presumed to be a contract of indemnity against liability, and not merely against damage." (Sec. 2648, Civ. Code.)

"The original insured has no interest in a contract of reinsurance." (Sec. 2649, Civ. Code.)

"The ordinary contract of reinsurance operates solely between reinsured and the reinsurer, and creates no privity whatever between the reinsurer and the person originally insured. The contract of insurance and that of reinsurance remain totally distinct and unconnected, and the reinsurer is in no respect liable, either as surety or otherwise, to reinsured's policy holders; * * *" (33 Cor. Jur., sec. 735, p. 57).

It is clear also that ordinarily a reinsurance transaction is doing business in the state where such contract is consummated and this may or may not be in the state where the original risk was assumed. The authorities confirm this conclusion.

"Reinsurance involves no transaction or privity between the reinsurer and those originally assured. The lower

courts rightly held that the making of the reinsurance compacts in New York between respondent and insurers of property in Mississippi was not the doing of business in that state." (*Morris & Co.* v. *Skandinavia Insurance Co.*, 279 U. S. 405, 408.)

In the case of *State* v. *Continental Ins. Co.*, (Ind.) 116 N. E. 929, it appeared from the special finding that the reinsurance involved was transacted at the city of Chicago, Illinois. Holding that under the terms of the statute there involved, the insurance company was not required to pay taxes to the state of Indiana on said reinsurance premiums, the court said: "Under the terms of the statute, it was the duty of the company to pay taxes to the state of Indiana on reinsurance premiums received from other companies on account of risks located in Indiana? * * * As we construe said section 10216, the legislative intent expresed therein is that the tax shall be imposed only on business done within the territorial boundaries of the state of Indiana. The license is upon the business, and the tax is laid on 'every insurance company not organized under the laws of this state, and doing business therein.' Where a foreign company takes over from another foreign company, for the purpose of reinsurance, risks on property in this state, the transaction is, of course, between the companies, and the insurer would not be subject to the tax on the reinsurance premium received if the business was not done in this state. And this would be so whether the companies were licensed to do business in this state or not."

The supreme court of Iowa arrived at the same conclusion in the case of *In re Continental Casualty Co.* [Iowa], 179 N. W., pp. 185-188, a case involving taxation of "gross premiums" on "business done in this state" when the right of the state to tax "reinsurance premiums" was presented. The court there said: "It is conceded that the contract of indemnity or reinsurance in question was entered into between these companies in New York, the state of their domicile, and that all the distribution of business and the pro rating of premiums pursuant thereto was done in such state. Clearly, therefore, the business was not done in Iowa." (See, also, *Swing* v. *Taylor*, [W. Va.] 70 S. E. 373.)

But the foregoing observations do not compel a reversal of the judgments here nor is such result compelled by the further fact that certain language employed in said provision may be accorded a broader meaning than that which it had when a part of previously existing statutes of the state.

Respondent justifies the ruling of the court below by its interpretation of the section, particularly the language: "less * * * reinsurance in companies or associations authorized to do business in this state", as follows: The provision, when read as a whole, is now applicable to insurance companies of all types, domestic as well as foreign. Each company must, under section 596 of the Political Code, procure a certificate of authority to transact business in the state. The language, when fairly construed, requires each company of every type to pay a like percentage of its gross premiums collected on policies issued and delivered upon risks assumed in the state; reinsurance premiums received by a domestic corporation must of necessity be returned and a percentage thereof paid to the state. No insurer can claim an exemption upon reinsurance premiums paid to an unauthorized company. Therefore, to prevent unjust discrimination, the state may not allow the exemption for reinsurance paid to an authorized company unless and until it is in a position to claim its uniform percentage of such reinsurance premiums so as to give it in the aggregate the equivalent of the percentage on the original gross premiums paid to the insurer. In short, the transaction is not between "authorized" companies unless this result follows. Further, any other construction of the section would not only be unjust discrimination against the domestic companies but would enable foreign companies, by a simple process of reinsurance outside the state, to escape altogether such tax exaction.

We think this argument of respondent is sound and unanswerable. The intent to tax all gross premiums, or their equivalent, must be present or else the whole scheme is discriminatory and unworkable. Appellant is charged with knowledge that the state is entitled to said percentage, or to its equivalent, and also with the further knowledge that the

state has this right above and in addition to any additional claims it may have under the so-called "retaliatory" rights conferred by said section. Appellant, therefore, in order to state a cause of action for a refund must of necessity show that these rights of the state have been fully satisfied. This is but another way of saying that appellant is estopped to deny that said reinsurance was consummated in the state unless and until it can show that the insurer has paid the full tax on gross premiums without exemption, including claims of the state, if any, for retaliatory taxes. This showing appellant failed to make.

That the term "reinsurance" premiums is included in the term "gross" premiums is clear, not only because of the nature of the insurance contract but also from the context of the provision, especially that portion thereof which allows, under certain conditions, a deduction of such payments from "gross premiums" received, thereby implying their previous inclusion therein.

For the foregoing reasons the complaints fail to state a cause of action.

The judgments are affirmed.

PRESTON, *J.*

We concur:

THOMPSON, *J.*
CURTIS, *J.*
WASTE, *C. J.*
SHENK, *J.*
LANGDON, *J.*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937—No. 316

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, **APPELLANT**

v.

CHARLES G. JOHNSON, AS TREASURER OF THE STATE OF CALIFORNIA, **APPELLEE**

Appeal from the Supreme Court of the State of California

BRIEF FOR CONNECTICUT GENERAL LIFE INS. CO.

California cannot lawfully tax Connecticut General Life Insurance Company on reinsurance business done exclusively in Connecticut, no part of which was done in California.

B. M. ANDERSON,
HARTLEY F. PEART,
RAYMOND BENJAMIN,
WM. MARSHALL BULLITT,

Counsel for Appellant.

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(2) Conn. General performed no act and transacted no business of any kind in California respecting such reinsurance; 8–9

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California denied Conn. General the equal protection of its laws in holding that Conn. General must pay a tax amounting

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to 5.5% of its premiums on California business, when other companies similarly located (but not doing a reinsurance business *outside* of California) are required to pay only 2.6% tax on California business. 38–39

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Opinion Below: *Conn. General v. Johnson,* 93 Cal. Dec. 4650; R. 27 (1937) decided in part on authority of *Conn. General v. Johnson,* 3 Cal. (2d) 83 (1935), appeal dismissed "for want of a properly presented federal question," 296 U. S. 535.

Jurisdictional Authority: Judicial Code §237(a). Rule 12 has been complied with, and probable jurisdiction noted, ... U. S. ... (Oct. 11, 1937).

Statutes Involved: California Constitution, Art. XIII (b) (f); California Civil Code (Deering, 1931) §§2646, 2648, 2649; California Political Code, §3664b.

Date of Judgment: April 26, 1937.

Nature of the Case, Rulings, etc.: California taxed Conn. General on reinsurance business done entirely in Connecticut (R. 1-22). Conn. General sued to recover the tax paid under protest, but its suits were dismissed on demurrer (R. 11, 23). On appeal, the California Supreme Court upheld the tax, against the claim of Conn. General that its rights under the 14th Amendment were violated (R. 27-32). Conn. General appealed.

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937—No. 316

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
Appellant,

v.

CHARLES G. JOHNSON, AS TREASURER OF THE STATE OF CALIFORNIA,
Appellee.

Appeal from the Supreme Court of the State of California

BRIEF FOR CONNECTICUT GENERAL LIFE INS. CO.

The sole question involved is whether California had the constitutional power to impose a $21,737 tax on the Connecticut General Life Insurance Company, viz, as a 2.6% tax upon $836,061.72 reinsurance premiums which various life insurance companies paid to Conn. General *in Connecticut,* because Conn. General (by reinsurance "treaties" made *in Connecticut*) had agreed to indemnify such other companies against liability under certain of their California policies—no act on the part of Conn. General having been done in California, but everything was done exclusively in Hartford, Connecticut.

The point is that, under the 14th Amendment, California cannot tax a Connecticut corporation on account of its reinsurance business done exclusively *in Connecticut,* no part of which business was transacted in California.

Relevant Statutes

The California Constitution, Art. XIII, §14(b)(f), provides as follows (Const. Cal., Treadwell's 6th Ed., 1931):

"(b) **Taxes on insurance companies.** Every insurance company or association doing business in this state shall annually pay to the state a tax of one and one-half per cent* upon the amount of the gross premiums received upon its business done in this state**, less return premiums and reinsurance in companies or associations authorized to do business in this state; . . .

(f) **Provisions self-executing, etc.** All the provisions of this section shall be self-executing. . . . The rates of taxation fixed in this section shall remain in force until changed by the legislature . . ."

The California Civil Code provides (Deering Ed. 1931; Cf. Ins. Code 1935, ch. 8, Reinsurance, §§620-623):

"§2646. **Reinsurance, what.** A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

§2648. **Reinsurance presumed to be against liability.** A reinsurance is presumed to be a contract of indemnity against liability, and not merely against damage.

§2649. **Original insured has no interest.** The original insured has no interest in a contract of reinsurance."

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* By an Act of March 5, 1921 (Stats. 1921, ch. 22, p. 20-21; Political Code §3664b) the 1½% tax was increased to a 2.6% tax, pursuant to the reserved power conferred by the Constitution, Art. XIII, §14(f).

** Although *literally* the 2.6% tax is imposed only upon "the gross premiums received upon its *business done in this state* [California]", the Supreme Court of California *con-*

STATEMENT OF THE CASE

1. *Conn. General's reinsurance business in 1930-31.* For many years, Conn. General (a Connecticut corporation) has been engaged in the following two lines of business:

I. **Life insurance** *(in many States including California).* In 1930-31, Conn. General collected $750,252.45 premiums on its California business; and it paid the full 2.6% tax thereon, amounting to $19,506.56 (R. 6, 7, 18, 19). There is no controversy over that tax.

II. **Reinsurance** *(but always in Hartford, Connecticut only)* of other life insurance companies against liability under certain of such other companies' policies in California and other States—in some of which States Conn. General was admitted to do business, and in others it was not so admitted.

No part of Conn. General's reinsurance business has ever been conducted in California; nor was any record of such business ever kept in California; and no Conn. General agent has ever done any act in California in connection with such reinsurance business (R. 3, 15).

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strued that language to include reinsurance premiums *paid in Connecticut for reinsurance business done exclusively in Connecticut* (outside of California); and held that California could impose a 2.6% tax upon the $836,061.72 reinsurance premiums which the Connecticut corporation received *in Connecticut* (outside of California), in return for which the Connecticut corporation reinsured (*in Connecticut*) various life insurance companies by indemnifying them against certain liabilities under their California policies (*Conn. General* v. *Johnson*, 3 Cal. (2d) 83 (1935); *Conn. General* v. *Johnson*, 93 Cal. Dec. 4650 (1937); R. 27).

Such *constructon* of the California Constitution is, of course, binding here.

Conn. General's reinsurance business was transacted solely as follows:

Various life insurance companies entered into reinsurance agreements or "treaties"* with Conn. General, at Hartford, Conn., by which "treaties" Conn. General agreed to indemnify such other companies against liability under designated life insurance policies which such other companies issued in various States, including California (R. 2, 3, 14, 15).

Conn. General never had any dealings with, nor assumed any liability whatsoever toward, nor collected

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* Reinsurance "treaties" (or "compacts") have had an established meaning for more than two hundred years. This Court has aptly pointed out that a reinsurance agreement or "treaty" (as it is technically called) is one of indemnity only, by which the reinsurer agrees to pay to the reinsured any loss sustained under the policy to the extent of the reinsurance; that the reinsured's claim for indemnity rests upon its own *liability* to pay the loss to the policyholder, and (in the absence of express language to the contrary, *Fidelity & Deposit Co.* v. *Pink*, ... U. S. ....., decided Dec. 6, 1937) is not dependent upon its own prior payment of (or ability to pay) the loss to such policyholder; that the reinsured company does not have to pay the loss *before* enforcing his claim against the reinsurer (*Allemannia Ins. Co.* v. *Firemen's Ins. Co.*, 209 U. S. 326, 332); that even the insolvency of the reinsured company (and its consequent inability to pay the loss to the policyholder) does not relieve the reinsurer of its obligation to pay the full amount of the reinsurance (*Id.; Hicks* v. *Poe*, 269 U. S. 118, 121); but that "Reinsurance involves no transaction or privity between the reinsurer and those [policyholders] orginally assured" (*Morris & Co.* v. *Ins. Co.*, 279 U. S. 405, 408).

The California law is likewise (*Conn. General* v. *Johnson*, 3 Cal. (2d) 83, 87; Calif. Civil Code, §§2646, 2649). Other State decisions are uniformly to the same effect (see, for example, *Vial* v. *Norwich Union Ins. Co.*, 257 Ill. 355; *Barnes* v. *Ins. Co.*, 56 Minn. 38; *American Bonding Co.* v. *American Surety Co.*, 127 Va. 209).

any premiums from, any of such *other* companies' *policyholders* in California or elsewhere; it never issued any policy to any such *policyholder* or to any such other companies; and it never did anything whatever in California in connection with the reinsurance business (R. 3, 15).

Such other companies always paid to Conn. General the full reinsurance premiums due under the treaties, by mailing their checks to Conn. General at Hartford, Connecticut. Correspondingly, Conn. General made all indemnity payments to such other companies by mailing its own checks from Hartford, Connecticut, to such other companies (R. 3, 4, 15, 16).

2. Conn. General's collection in Hartford, Connecticut, of $836,061.72 premiums under the reinsurance treaties, insofar as they related to California policies of other companies. In 1930-1931 (by checks mailed from their respective Home Offices to Conn. General at Hartford, Connecticut) various life insurance companies paid to Conn. General *in Connecticut* the total amounts due it for reinsurance premiums (R. 3, 4, 15, 16).

Those checks included $836,061.72 reinsurance premiums for the Conn. General's indemnifying such other companies against liability under certain of their California policies, to-wit (R. 4, 16):

1930	$416,594.03
1931	$419,467.69
Total	$836,061.72

For those years, Conn. General filed its Annual Reports with the California Insurance Commissioner (in the form required by him), wherein it showed that it had received (outside of California) the said $836,061.72 reinsurance premiums for its reinsurance (outside of California) of such other life insurance companies against liability under their California policies (R. 4, 5, 16).

3. *California taxed Conn. General $21,737.60 on account of such $836,061.72 reinsurance premiums paid to Conn. General in Hartford, Conn.* California imposed, and Conn. General paid (under protest), a 2.6% tax ($21,737.60) on account of the above $836,061.72 as follows (R. 6-7, 18-19):

$836,061.72 reinsurance premiums which Conn. General collected in Hartford, Conn.		California's 2.6% tax on the $836,061.72	Conn. General's payment (under protest) of the $21,737.60 tax	
1930	$416,594.08	$10,831.44	Aug. 7, 1931, Jan. 23, 1932,	$5,415.72 $5,415.72
1931	$419,467.69	$10,906.16	Aug. 15, 1932, Feb. 2, 1933,	$5,453.08 $5,453.08
Total,	$836,061.72	$21,737.60	. . Tax . .	$21,737.60

4. *Decision below; and this Appeal.* Conn. General then sued the State Treasurer, Johnson, to recover the $21,737.60 taxes paid (R. 1-9, 13-21).

The suits were dismissed on demurrers (R. 11, 23). The judgments were affirmed by the Supreme Court of California*. The reasoning of the California Court is so unique and involved that a discussion of its opinion will be postponed to p. 27 *infra*.

This appeal was taken; and probable Federal jurisdiction has been noted.

Assignment of Errors

The ten errors assigned (R. 36-37) are reducible to the single proposition that the admittance of Conn. General to do business in California did not thereby confer

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* On the authority of its prior decision on the 1927-1928 taxes, and for additional reasons regarding the Federal question now raised (R. 27-33; Cf. *Conn. General* v. *Johnson*, 3 Cal. (2d) 83, appeal dismissed, 296 U. S. 535).

any power on California to tax Conn. General on the reinsurance premiums which other life insurance companies paid to Conn. General *in Connecticut* on account of reinsurance treaties *made in Connecticut,* and wholly to be *performed in Connecticut,* whereby Conn. General agreed *in Connecticut* to indemnify such other companies against liability under some of their California policies; and that California's taxation of Conn. General's business *in Connecticut* was a taking of its property without due process of law, and denying Conn. General the equal protection of its laws in violation of the 14th Amendment.

Summary of Points Discussed

1. California cannot lawfully tax Conn. General on the $836,061.72 reinsurance premiums because:

(1) The reinsurance treaties were executed wholly outside of California, to-wit: in Connecticut only, where they were to be performed and actually were performed, and where the $836,061.72 reinsurance premiums were also paid;

(2) Conn. General performed no act and transacted no business of any kind in California respecting such reinsurance;

(3) Therefore, California had no taxing jurisdiction over the reinsurance treaties or the $836,061.72 reinsurance premium payments made in Connecticut.

2. This court should reject the reasoning of the California Supreme Court.

3. California denied Conn. General the equal protection of its laws in holding that Conn. General must pay a tax amounting to 5.5% of its premiums on California business, when other companies, similarly located (but not doing a reinsurance business outside of California) are required to pay 2.6% on California business.

FIRST POINT

California cannot lawfully tax Conn. General on the $836,061.72 reinsurance premiums because:

(1) The reinsurance treaties were executed wholly outside of California, to-wit: in Connecticut only, where they were to be performed and actually were performed, and where the $836,061.72 reinsurance premiums were also paid;

(2) Conn. General performed no act and transacted no business of any kind in California respecting such reinsurance;

(3) Therefore, California had no taxing jurisdiction over the reinsurance treaties or the $836,061.72 reinsurance premium payments made in Connecticut.

The reinsurance treaties were made wholly outside of California, to-wit: *in Connecticut.* The $836,061.72 reinsurance premiums were paid to Conn. General *in Connecticut* only. All indemnity payments which Conn. General paid to the reinsured companies were paid *in Connecticut.* Respecting such reinsurance, Conn. General *performed no act* and *transacted no business* of any kind whatever *in California* (R. 3-4, 15-16; 3 Cal. (2d) 83, 86).

The California Supreme Court correctly pointed out the distinction between contracts of insurance and reinsurance; held that the reinsurance treaties operated solely between Conn. General and the reinsured companies, and involved no transaction or privity whatever between

Conn. General and the California policyholders originally insured; that Conn. General was in no respect liable, as surety or otherwise, to the California policyholders of the reinsured companies; and apparently held that the making of the reinsurance treaties was *not* "doing business" in California but only in Connecticut (R. 27; *Conn. General* v. *Johnson,* 3 Cal. (2d) 83, 87, citing *State* v. *Continental Ins. Co.,* 67 Ind. App. 536, and *In re Continental Cas. Co.,* 189 Iowa 933; California Civil Code, §§2646, 2649; p. 2 *supra,* note; Cf. *Allemannia Ins. Co. Case,* 209 U. S. 326, 332; *Hicks* v. *Poe,* 269 U. S. 118, 121; *Skandinavia Ins. Co. Case,* 279 U. S. 405, 408; *Fidelity & Deposit Co.* v. *Pink,* ..... U. S. ....., (decided Dec. 6, 1937).

We submit:

I. *California had no power to tax either (1) the reinsurance treaties which were executed, were to be performed, and actually were performed outside of California, or (2) the $836,061.72 reinsurance premiums which were never in California, and were paid only in Connecticut.*

As the reinsurance treaties were executed *in Connecticut* where they were to be performed and actually were performed; as the various insurance companies paid to Conn. General *in Connecticut* the $836,061.72 reinsurance premiums, which were always *in Connecticut* and *never* in California; as Conn. General made all payments in discharge of its indemnity under the reinsurance treaties by mailing checks *from Connecticut* directly to the various reinsured companies; as Conn. General *never did anything whatever in California* with respect to the reinsurance treaties or the premiums thereunder; and as

Conn. General never dealt in California, Connecticut or elsewhere with the holders or beneficiaries of the California policies,—therefore, California had no right to tax the $836,061.72.

The authorities quoted in the margin* establish the proposition that California cannot tax reinsurance treaties *made in Connecticut,* or the reinsurance premiums thereunder which were *paid in Connecticut (Frick* v. *Pennsylvania,* 268 U. S. 473, 489, and cases there cited; *Union Transit Co. v. Kentucky,* 199 U. S. 194, 202-204; *Farmers Loan Co.* v. *Minnesota,* 280 U. S. 204, 210; *Safe Deposit & Trust Co.* v. *Virginia,* 280 U. S. 83, 92).

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* In *James* v. *Dravo Contracting Co.,* ..... U. S. ....., decided December 6, 1937, West Virginia taxed a Pennsylvania company upon the amounts it received from the United States for the construction of locks and dams in West Virginia. This Court held that the tax was bad as to so much of the payments as were made on account of the purchase of materials *outside* of West Virginia, and the work done in Pennsylvania on the materials, which when fabricated in Pennsylvania, were shipped to West Virginia for installation. The Court said:

> "As to territorial jurisdiction.—Unless the activities which are the subject of the tax were carried on *within the territorial limits* of West Virginia, the state had no jurisdiction to impose the tax. *Hans Rees' Sons* v. *North Carolina,* 283 U. S., 123, 133, 134, *Shaffer* v. *Carter,* 252 U. S. 37, 57; *Surplus Trading Co.* v. *Cook,* 281 U. S. 647."

After pointing out that the contractor purchased materials *outside* of West Virginia, from which materials it manufactured *in Pennsylvania* equipment for a job, and then shipped such equipment to West Virginia for installation, the Court said:

> "It is clear that West Virginia had no jurisdiction to lay a tax upon respondent with respect to this work *done in Pennsylvania.* As to the material and equipment there fabricated, the business and activities of respondent in

In *St. Louis Compress Co.* v. *Arkansas,* 260 U. S. 346, a Missouri corporation (doing business in Arkansas) secured insurance policies in Missouri covering its own property in Arkansas. Arkansas taxed the Missouri corporation upon the premiums it paid in Missouri. The tax was held void, this Court saying:

> "The Arkansas tax manifests . . . a purpose to discourage insuring in companies that do not pay tribute to the state. This case is stronger than that of *Allgeyer* in that here no act was done within the State, whereas there a letter constituting a step in the contract was posted within the jurisdiction. It is true that the State may regulate the activities of foreign corporations within the State but it cannot regulate or interfere with what they do outside."

So here Conn. General *did no act in California* even remotely connected with the reinsurance.

In *People ex rel. Sea Ins. Co.* v. *Graves,* 274 N. Y. 312, an English insurance company (doing business in New York) made a reinsurance treaty *in New Jersey* with Hartford and Federal (insurance companies also

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West Virginia consisted of the *installation* at the respective sites within that state and an apportionment would in any event be necessary to limit the tax accordingly. *Hans Rees' Sons* v. *North Carolina, supra.*"

In the case at bar, *Conn. General had no activities of any kind* in California with respect to the reinsurance treaties or premiums, all of which were transacted *exclusively in Connecticut.*

If Conn. General had carried on in California any part of its activities with respect to the reinsurance treaties, premiums paid, or liabilities thereunder, a different question would arise; and there might be a possible apportionment of taxable liability as between Connecticut and California (*Hans Rees' Sons Case, supra*); but even that question cannot arise here, as Conn. General *did absolutely nothing in California* arising under, or in the slightest degree related to, the reinsurance treaties or the reinsurance premiums.

doing business in New York), by which the English company reinsured some of the New York risks of Hartford and Federal, who paid the reinsurance premiums to the English company *in New Jersey*. New York then attempted to tax the English company (just as California attempts to tax Conn. General) on the reinsurance premiums which the English company had received in New Jersey from Hartford and Federal, who had thus reinsured some of their New York risks.

The Court of Appeals of New York held that New York could not tax the English company on account of the reinsurance premiums so received by it *in New Jersey* for reinsuring New York risks. The Court pointed out that the English Company had no contract relation with the New York owners of the property insured. Its only contract was with Federal and Hartford, which was a *New Jersey* contract. After a full discussion of the subject, the Court said:

> ". . . the parties insured directly in New York had no contract with relator [English company] and could not enforce the reinsurance contract against it in case of loss. That company [English company] was a stranger in fact and in law to the parties insured under the New York contracts made with the Federal and Hartford. In the event of a loss on a policy issued by the Hartford in New York, the insured looked to the Hartford alone and the latter would look to the relator [English company] under its New Jersey contract for the portion of the loss which it had reinsured. No act of the original insured brought the reinsurance contract into effect. The insured would not even know that a reinsurance contract existed (*Morris & Co.* v. *Skandinavia Ins. Co.*, 279 U. S. 405).
>
> "The premiums received by relator [English company] were contracted for in New Jersey and were received there. Its capacity to make and perform its contract was not derived

from the laws of New York (*Alaska Packers Assn.* v. *Industrial Accident Comm.*, 294 U. S. 532, 540)."

As there, so here. Just as New York could not tax an English company (doing business in New York) on the reinsurance premiums which the English company received *in New Jersey* under a reinsurance treaty *made in New Jersey,* reinsuring some of Federal's and Hartford's *New York* risks, so California cannot tax Conn. General on the reinsurance premiums which various companies paid to Conn. General *in Connecticut* for the reinsurance of those companies' California risks.

In *Hartford Ind. Co.* v. *Delta Co.,* 292 U. S. 143, 149, it was said:

"A state . . . cannot extend the effect of its laws beyond its borders so as to destroy or impair the right of citizens of other states to make a contract not operative within its jurisdiction, and lawful where made."

In *Alaska Packers Assn.* v. *Comm'n.,* 294 U. S. 532, 540, it was said:

"Similarly, a state may not penalize or tax a contract entered into and to be performed outside the state, although one of the contracting parties is within the state."

See also *Allgeyer* v. *Louisiana,* 165 U. S. 578, 591-592; *New York Life v. Head,* 234 U. S. 149, 161-164; *New York Life* v. *Dodge,* 246 U. S. 357, 374.

II. *California did not, and could not, confer on Conn. General any franchise or privilege to make reinsurance treaties outside of California; and, therefore, California has no power to tax Conn. General with respect to reinsurance contracts made, paid for and wholly to be performed in Connecticut.*

Conn. General's power or authority to enter into the

reinsurance treaties in Connecticut, and there to collect the reinsurance premiums thereunder, was derived solely from the State of Connecticut. With those transactions, California had no concern, and could not possibly confer any privilege or franchise on Conn. General to enter into them.

Therefore (while California can tax Conn. General for the privilege of doing either a life insurance business or a reinsurance* business *in California*), it cannot tax Conn. General for the privilege of doing acts *beyond* the territorial limits of California.

The privilege or franchise which California granted concerns only reinsurance business *done* in California; whereas, the tax in dispute concerns only reinsurance business *not done* in California. California has attempted to tax Conn. General on account of a franchise *not granted,* and on account of a privilege *not exercised.*

The California Supreme Court has said recently that the gross premiums tax here involved is an excise tax in the nature of a franchise tax. *Northwestern Mutual Ins. Co.* v. *Johnson,* 8 Cal. (2d)—, 63 Pac. (2d) 814, 816 (1936). It is not a property tax. *Carpenter* v. *Peoples Mutual,* 94 Cal. Dec. 674; *Consolidated Title Co.* v. *Hopkins,* 1 Cal. (2d) 414, 419. As here applied, it is a franchise tax for a franchise not granted.

California cannot tax a license or privilege it does not grant. For a State to exact a license tax from a foreign corporation for a privilege the State does not grant is depriving that corporation of its property without due process of law (*Chicago R. R. Co.* v. *Chicago,* 166 U. S. 226; *Union Transit Co.* v. *Kentucky,* 199 U. S. 194, 202, *Provident Savings* v. *Kentucky,* 239 U. S. 103).

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* Conn. General never did any reinsurance business in California; nor did it do any act in California in connection with any reinsurance business either there or elsewhere.

In *Provident Savings Assn.* v. *Kentucky,* 239 U. S. 103, a New York insurance company had been admitted to do business in Kentucky, and had a large number of Kentucky policies outstanding. It withdrew entirely from Kentucky. Thereafter, the Kentucky policyholders paid their premiums by mailing checks to the company in New York. Kentucky attempted to tax the amount of the premiums thus forwarded by Kentucky policyholders to the company in New York.

This Court held that the tax was void because the taxing power of Kentucky could not extend to a company in New York which merely received there, by mail, premium payments from its Kentucky policyholders. Kentucky argued that the existence of Kentucky policies, their continuance in force, and the necessity of mailing the premiums therefor from Kentucky to New York, gave Kentucky the right to tax such premiums. In response to that argument, this Court said:

> "Taxation without jurisdiction has been held to be a violation of the Fourteenth Amendment [citation omitted]; and the principle involved applies to the assertion of authority on the part of the State to exact a license tax for the privilege of doing acts which lie beyond the sphere of local control. It follows that the quality of the acts with respect to which the State exercises the taxing power must be considered when the constitutional protection against the transgression of jurisdictional limits is invoked . . . As the policies remained in force, it is said the company continued to furnish protection to citizens of Kentucky. The renewal premiums, as already stated, were paid in New York. There is, however, a manifest difficulty in holding that the mere continuance of the obligation of the policies constituted the transaction of a local business for which a privilege tax could be exacted. As a privilege tax, the tax rests upon the assumption that what is done depends upon the State's consent. But the continuance of the contracts of insurance

> already written by the Company was not dependent on the consent of the State . . . These policies are contracts already made; the State cannot destroy them or make their continuance, independent of acts within its limits, a privilege to be granted or withheld. Neither the continuance of the obligation in itself, nor acts done elsewhere on account of it, can be regarded as being within the State's control [citation omitted] . . . In the present case, the question is . . . as to the power of the State to treat the mere continuance of the obligation of the existing policies held by resident policy holders as the transaction of a local business justifying the imposition of an annual privilege tax in the absence of the actual conduct of business within the limits of the State."

So far as the taxation of the reinsurance premiums here involved is concerned, Conn. General is much further removed from California's authority than Provident Savings was removed from Kentucky's taxing power. *Provident Savings'* own policies had been executed, delivered and held in Kentucky by Kentucky policyholders while Provident Savings was doing business in Kentucky; and after its withdrawal from Kentucky, its policies were still kept in force by Kentucky policyholders mailing the premium payments from Kentucky to New York. **Yet Kentucky could not tax those premium payments.** In the case at bar, the reinsurance contracts were *not* made or executed in California, but solely in Connecticut. The reinsured "policyholders" were *not* California persons, but were various life insurance companies, who paid their reinsurance premiums *in Connecticut.*

There was no privity between Conn. General and the California policyholders of the other companies. Those California policyholders could not even sue Conn. General upon the reinsurance treaties.

It necessarily follows that California has absolutely no power to tax Conn. General on account of the trans-

actions which took place *in Connecticut* between Conn. General and other life insurance companies, by which the latter there paid the $836,061.72 reinsurance premiums to Conn. General.

If California has any power to tax the $836,061.72, it must be upon some ground *other* than the naked right to tax reinsurance premiums paid *in Connecticut* under a contract wholly executed, to be performed and actually performed in Connecticut.

III. *As the price of admitting Conn. General into California to do a life insurance and reinsurance business therein, California has no right to tax Conn. General with respect to reinsurance treaties or the reinsurance premiums thereunder,—all respectively executed, paid and wholly performed in Connecticut.*

California may concede that it cannot tax, as such, reinsurance treaties made, or reinsurance premiums paid, in Connecticut; and yet it may argue that, as the *price* of admitting Conn. General (a foreign corporation) into California, and licensing it to do an insurance and reinsurance business therein, California can *measure the price** of that privilege by a tax based, not only upon Conn. General's business done *in California,* but also based upon its reinsurance business *done in Connecticut.*

To that contention, we respond:

1. *St. Louis Compress Co.* v. *Arkansas,* 260 U. S. 346

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* *Horn Silver Mining Co.* v. *New York,* 143 U. S. 305; *New York* v. *Roberts,* 171 U. S. 658, 664; cases cited in *Flint* v. *Stone Tracy Co.,* 220 U. S. 107, 164-167; *Equitable Life Society* v. *Pennsylvania,* 238 U. S. 143, 147; *Compania De Tabacos* v. *Collector,* 275 U. S. 87.

and *People ex rel. Sea Ins. Co.* v. *Graves*, 274 N. Y. 312 (p. 11 *supra*) are direct authorities to the contrary.

In *Boseman* v. *Conn. General Life Ins. Co.*, 301 U. S. 196, Conn. General was admitted and fully *authorized inter alia*, to do an insurance business in Texas, but (just as here with respect to *reinsurance*), it "has never written or delivered a contract or policy of insurance of any kind or character in the State of Texas" (p. 201). Conn. General had many transactions in Connecticut and Pennsylvania with respect to insuring, and it did insure, the Texas employees of the Gulf Oil Co. under a "group" policy. This Court held it was not a Texas contract, and referred to

> "the purpose of the parties to the contract that everywhere it shall have the same meaning and give the same protection and that inequalities and confusion liable to result from applications of diverse state laws shall be avoided [citation omitted]."

The *Boseman* case is in point here because it shows (*a*) that mere admittance and *authority* to do one kind of business (without actually doing it*) does not tend to show that such business *is* done in that State, and (*b*) the impossibility of *construing the reinsurance treaties made in Connecticut* to be subject to the control, taxation or other laws of all the diverse States, residents of which happen to have policies in the companies which reinsured such risks in Conn. General—because, if so, the *same reinsurance treaty* made in Connecticut would be subject to 47 different constructions, taxation etc., and even the "full faith and credit" Clause would fail to compel uniformity in construction etc., of the same instrument.

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* Conn. General did other kinds of business in Texas than insurance.

Futhermore, in *Boseman's* case he was a third-party-beneficiary of the "group" policy and entitled to sue the Conn. General directly; and he held its "individual certificate" "as evidence of the insurance"; whereas, here, the California policyholders of the reinsured companies have no right to sue the Conn. General and do not hold any sort of contractual relation—direct or indirect—with it. *A fortiori,* therefore, if the Boseman contract was not a Texas contract, then Conn. General is not a party to any California contract which can be used as an excuse for California's taxing Conn. General.

In *Home Ins. Co.* v. *Dick,* 281 U. S. 397, 408, Mr. Justice Brandeis aptly said

> "The division of this Court in the *Tabacos* and *Dodge* cases was not on the principle here stated, but on the question of fact whether there were in those cases things done within the State of which the State could properly lay hold as the basis of the regulations there imposed. Compare *Bothwell* v. *Buckbee, Mears Co.,* 275 U. S. 274; *Palmetto Fire Ins. Co.* v. *Conn,* 272 U. S. 295. In the absence of any such things, as in this case, the Court was agreed that a State is without power to impose either public or private obligations on contracts made outside of the State and not to be performed there. Compare *Mutual Life Insurance Co.* v. *Liebing,* 259 U. S. 209; E. Merrick Dodd, Jr., 'The Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws', 39 Harv. L. Rev. (1926) 533, 548".

2. Although in this particular case California has limited its tax on Conn. General to *that part* of the reinsurance premiums it received in Connecticut for reinsuring the *California* policies of other companies, yet a limitation to *California* policies lends no validity to the tax, because,

(*a*) Conn. General has done nothing in California in

connection with, nor had any transactions in California or elsewhere with, the California policyholders, who cannot sue Conn. General and need not even know of the existence of the reinsurance treaty:

(*b*) If (as the price of granting Conn. General a license to do local business) California can tax the reinsurance premiums paid *in Connecticut* with respect to *other companies'* California policies, it can, with equal constitutional validity, increase the price so as to tax the total reinsurance premiums which Conn. General may receive *for its reinsurance in Connecticut* of other companies' policies throughout the *whole* United States.

(*c*) If, as the price of such admittance, California can tax *reinsurance* premiums collected in *Connecticut*, it can just as logically and constitutionally tax *original* or *renewal* premiums collected by Conn. General in Connecticut, in Massachusetts, and in all the other States of the Union.

(*d*) If California can do that, every other State can do it, with the result that the combined effect of such taxation by forty-eight States would tax life insurance out of existence as the price of doing any business outside each company's home state.

This then again brings up the old question of the power of a State (in prescribing the terms of admission for a foreign corporation to do business within its limits) to exact what have been called "unconstitutional conditions". It is unnecessary here to review the long controversy in this Court between conflicting doctrines*.

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* Cf. *Doyle* v. *Continental Ins. Co.*, 94 U. S. 535, and *Security Mutual* v. *Prewitt*, 202 U. S. 246, on the one hand, with, on the other hand, *Ins. Co.* v. *Morse*, 20 Wall. 445;

The present rule is that California may admit or exclude Conn. General from doing business in California; but if it admits (as it did admit) Conn. General to do business in California, it cannot impose on Conn. General, as a condition of such admission or of continuance therein, that Conn. General shall relinquish its constitutional right to be free of taxation in California on account of transactions *outside* of California, and over which California has no constitutional power or control.

If the State may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence (*Frost Trucking Co.* v. *R. R. Comm.*, 271 U. S. 583, 594).

In short, the power to impose conditions of admittance cannot be used to accomplish prohibited results (*Fidelity & Deposit Co.* v. *Tafoya*, 270 U. S. 426; *Miller* v. *Milwaukee*, 272 U. S. 713, 715; *Nichols* v. *Coolidge*, 274 U. S. 531, 541-542).

3. *Equitable Life Society* v. *Pennsylvania*, 238 U. S. 143, and *Compania de Tabacos* v. *Collector*, 275 U. S. 87, do not support California's contention.

In the *Equitable* case, a Pennsylvania statute imposed upon foreign life insurance companies a 2% annual tax on the gross premiums "received from business done within the state". Equitable Life (a foreign corporation)

Barron v. *Burnside*, 121 U. S. 186; *Western Union* v. *Kansas*, 216 U. S. 1; *Herndon* v. *C. R. I. & Pac.*, 218 U. S. 135; *Harrison* v. *St. L. & San Francisco R.*, 232 U. S. 318; *New York Life* v. *Head*, 234 U. S. 149; *Phoenix Ins. Co.* v. *McMasters*, 237 U. S. 63; *Wisconsin* v. *Philadelphia & Reading Coal Co.*, 241 U. S. 329; culminating in *Terral* v. *Burke Constr. Co.*, 257 U. S. 529 (expressly overruling the *Doyle* and *Prewitt* cases), reaffirmed in *Mortensen* v. *Security Ins. Co.*, 289 U. S. 702.

did a large business in Pennsylvania, and paid about $90,000 a year as the 2% tax upon the premiums which it actually collected in Pennsylvania.

It contested the tax upon the *renewal* premiums which its Pennsylvania policyholders mailed directly to the company's New York office. This Court (HOLMES, J.) sustained the tax, on the ground that it was "a tax for the privilege of doing business in the state" and that the state had the "right to consider the benefit thus annually extended into Pennsylvania".

All that the case decided was that for the privilege of doing business in Pennsylvania that State could tax an insurance company on the gross premiums which it collected *from its own Pennsylvania policyholders*—even though some of them mailed their checks to the Company's New York office instead of paying them at its local Pennsylvania office—as the company had to do various acts in Pennsylvania concerning those very policies.

This basis of the *Equitable* decision was quite clearly explained in the *Compania General de Tabacos* case, 275 U. S. 87, 96-98, where this Court minimized some of Mr. Justice Holmes' expressions in the *Equitable* case, and said:

> "This Court said that the Equitable Society was doing business in Pennsylvania when it was annually paying dividends in Pennsylvania, or sending an adjuster into the state in case of dispute, or making proof of death, and therefore that it was not improper to measure the tax for doing business in the state by the number of individuals whose lives had been insured and with respect to whom, and the execution of whose contracts, the company was necessarily doing business in the state, even if the premiums paid by some of them had not been paid in the state."

In short, this Court held that where a company was doing a particular kind of business in a State, incidental

business would have to be transacted in the State in connection with all of its policyholders, even though some of them paid some of their premiums without the State.

The *Equitable* case is no authority that a State may constitutionally levy a premium tax on account of business not done in the State but wholly done outside the State. In the case at bar (unlike the *Equitable* case) Conn. General neither paid dividends in California, nor sent an adjuster into the State, nor had proofs of death made out in the State in connection with its reinsurance treaties. The policyholders in question were not Conn. General policyholders; and indeed they may not, and probably do not, know of any reinsurance. All dealings with the California policyholders would be by the reinsured companies which issued their policies to them, and not by Conn. General.

California may suggest that the protection which it furnishes to California policyholders justifies the tax. This contention must be rejected, because (*a*) such California policyholders were *not* policyholders of Conn. General, but were solely policyholders of the reinsured companies, and (*b*) it was repudiated in the *Compania de Tabacos* case, where, in minimizing Mr. Justice Holmes' language, this Court said:

> "If that [the State's protection of policyholders] were to be admitted, then neither the *Allgeyer* nor the *Compress* case could be sustained, for the property in each of those cases was protected by the government seeking to impose the forbidden exactions upon the owner, who obtained the insurance out of the state, on that property within it."

At the risk of repetition, we insist that the only point in the *Equitable* case (as explained in the *Compania de Tabacos* case) is that, as the Equitable was in fact doing business generally in Pennsylvania with respect to all of

its Pennsylvania policyholders (thereby doing a great many things in Pennsylvania in connection with such policyholders), the incidental fact that some of the policyholders paid renewal premiums in New York, did not prevent Pennsylvania from taxing Equitable on the total amount of the premiums it collected from its Pennsylvania policyholders wherever the premiums might be paid to it.

In the *Compania de Tabacos* case 275 U. S. 87, the Tobacco Co. (a Spanish corporation) was doing business generally in the Philippines, where it owned tobacco stored there. The Tobacco Co.'s head office in Spain insured that tobacco* in Paris and London insurance companies, respectively (1) against marine risks (when the tobacco should be shipped from the Philippines to Europe) in a Paris company which was not licensed to do business in the Philippines and had no agent there, and (2) against fire (in the Philippines) in the London company, which also did business in the Philippines. All marine and fire losses were paid to the Tobacco Co. in Paris and London, respectively.

The Philippines imposed a 1% tax on the Tobacco Co. as the owner of property in the Philippines where such owner insured the property in foreign companies and did not make use of any agent residing in the Philippines.

The case is divided into two parts:

First: the tax on the Tobacco Co. on account of the premiums which it paid for marine insurance to the Paris company in Paris, which company had no agent in the Philippines and did no business there; and

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* Without the use of any agent in the Philippines or any act done there.

Second: the tax on the Tobacco Co. on account of the premiums which it paid for fire insurance to the London Company in London (which latter was doing business, and had an agent, in the Philippines) on the tobacco stored in the Philippines.

First: This Court held that the Philippines had no right to tax the Tobacco Co. (a Spanish company doing business in the Philippines) because it had made a contract in Paris for marine insurance on tobacco shipped from the Philippines to Spain, the premiums for the marine insurance being paid in Paris. The Court said (p. 92):

> "It is an imposition upon a contract not made in the Philippines and having no situs there, and to be measured by money paid as premium in Paris, with the place of payment of loss, if any, in Paris. We are very clear that the contract and the premiums paid under it are not within the jurisdiction of the government of the Philippine Islands."

After reviewing the *Allgeyer* and *Cotton Compress Co.* cases (p. 11, *supra*), this Court said (p. 94):

> "The effect of them is that, as a state is forbidden to deprive a person of his liberty without due process of law, it may not compel any one within its jurisdiction to pay tribute to it for contracts or money paid to secure the benefit of contracts made and to be performed outside of the state."

So here. Although Conn. General, having been admitted to do business in California, is "within its jurisdiction", nevertheless California cannot compel Conn. General to pay tribute for contracts, or money received on account of contracts, made and to be performed outside of California.

This Court reaffirmed the *Allgeyer* and *Compress* cases; and distinguished the *Equitable* case (p. 21, *supra.*).

Second: This Court sustained the tax on the Tobacco Co. for the premiums it paid to the London company for fire insurance on tobacco in the Philippines. It admitted that "The case is a close one." As the Tobacco Co. and the London company were both doing business in the Philippines and made a contract in Europe for the insurance of tobacco in the Philippines, this Court assumed (perhaps unjustifiably) "that this tax, placed upon the assured, must ultimately be paid by the insurer, and treating its real incidence as such", it further assumed that as the London company was doing business in the Philippines it *might* require adjustment of fire risks and the activities of agents in the Philippines with respect to the settlement of losses arising there.

It is doubtful whether this Court had any justification for assuming, as the basis of its decision, that a tax imposed by the Philippines upon the Tobacco Co. *would ultimately be paid by the London company,* or that the London company would have to adjust in the Philippines, or use the activities of its agents there. However that may be, the basis of the decision was that (just as in the *Equitable* case) the London company was doing business in the Philippines and would have to adjust in the Philippines fire risks on the tobacco, and would have to use agents in the Philippines in the settlement of losses (BRANDEIS J., in *Home Ins. Co.* v. *Dick,* 281 U. S. 397, 408, page 19, *supra*); and that hence it could be taxed on the premiums which it collected in London under London contracts for insuring the tobacco, upon the further assumption* that the Tobacco Co. would, in some way, ultimately make the London company pay the tax.

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* It was a rather novel theory that a tax on A could be sustained by assuming that A would in some way make B pay it.

Without stopping to consider the extreme limit to which this part of the case went, it is sufficient to point out that it is inapplicable to the case at bar. Here it is an undisputed fact (not to be overcome by any assumption) that Conn. General did not exercise any right to do business in California by adjusting risks or using any agents in California with respect to the settlement of losses arising under the reinsurance treaties; but that, on the other hand, Conn. General, with respect to reinsurance, did no act in California and took no step there with respect to the reinsurance, but everything was done *outside of California.*

In its last analysis, this Court must decide whether the admittance of a foreign corporation to do business, authorizes California, as the price of such admittance, to tax that corporation with respect to *other* business, which it does exclusively *outside of California,* and in the transaction of which, it does not in any way exercise its license to do business in California.

SECOND POINT

This court should reject the reasoning of the California Supreme Court.

In holding that Conn. General ought to pay a *California* tax on its *Connecticut* transactions, the California Supreme Court based its conclusion upon the extraordinary assumption that a California *tax exemption* granted to *other* insurance companies would confer a *Connecticut benefit* upon Conn. General; and that, therefore, *California* can tax that *Connecticut* benefit!!

To comprehend that unique theory, a clear understanding of the terms and effect of the California tax law

is essential, which can be most easily grasped by successive concrete illustrations.

In levying the 2.6% tax on the "gross premiums received upon its business done in this state" (p. 2 *supra*), California provides for a *deduction* of all *reinsurance* premiums paid to companies authorized to do business in California (Const. Art. XIII §14(b), p. 2 *supra*).

For companies "doing business" in California, the tax situation respecting "gross premiums received upon its business done in this state" and the reinsurance premiums paid to other companies "authorized to do business in this state", works out as follows:

The names and figures are illustrative only.

	Gross Premiums	Tax
1. Equitable did not reinsure any of its risks, but on "business done" in California collected "gross premiums" of	$500,000	
Equitable paid 2.6% tax thereon, or		$13,000
2. New York Life (with the same amount "business done" in California) collected the same "gross premiums" of	$500,000	
But New York Life *reinsured in California* some of its business in the Vermont Life (which does a large reinsurance business *in California*); aid New York Life paid to Vermont Life reinsurance premiums of	$100,000	
	$400,000	

New York Life paid 2.6% tax on $400,000 or	$10,400
Vermont Life also paid, *inter alia*, 2.6% tax on the $100,000 gross premiums it received in California from New York Life,	$2,600
On the $600,000 "gross premiums", California thereby collected [from New York Life ($500,000) and Vermont Life ($100,000) jointly], exactly the same $13,000 tax it collected on the Equitable's $500,000, *supra*	$13,000

So far, so good; and it was California's own private affair if she chose to allow an exemption of reinsurance premiums paid, and was satisfied to collect the same $13,000 tax on the Equitable's $500,000 business, as she collected on $600,000 business done by the New York Life and Vermont Life.

But the next illustrations show where the "shoe pinches" which caused the suit at bar.

3. Conn. General (like the Equitable) collected on its "business done" *in California* "gross premiums" of	$500,000	
Conn. General paid 2.6% thereon or		$13,000

4. Atlantic Life (on its California business) collected "gross premiums" of	$500,000	
Atlantic Life then made a reinsurance "treaty" *in Connecticut* (instead of in California as in the case of the New York Life - Vermont Life, *supra*) by which Conn. General reinsured *in Connecticut* some of the Atlantic Life's risks, for which Atlantic Life paid Conn. General *in Connecticut* $100,000 reinsurance premiums; and Atlantic Life took the allowable deduction for such reinsurance premiums paid	$100,000	
	$400,000	
Atlantic Life paid its 2.6% tax on such $400,000		$10,400

California's complaint is that while on "business done" in California, (*a*) the Equitable and Conn. General (each collecting $500,000 "gross premiums") paid $13,000 apiece, and (*b*) New York Life and Vermont Life (jointly collecting $600,000 gross premiums) pay jointly $13,000, *nevertheless,* (*c*) Atlantic Life (also collecting $500,000 "gross premiums" pays only $10,400 tax.

Therefore, California seeks to make Conn. General (even though it has paid $13,000 tax on all its $500,000 "business done" in California—the same as the Equitable) pay an additional $2,600 tax, so as to make California's tax receipts the same ($13,000) on the combi-

nation of Atlantic Life-Conn. General business as on the combination of New York Life-Vermont Life business.

That is the case here.

But California overlooks this vital distinction: Vermont Life had a $100,000 "gross premium" collection *in California* on its reinsurance "business done" *in California,* and, of course, paid $2,600 tax on account thereof; *whereas,* Conn. General paid its full $13,000 tax on its $500,000 "gross premium" business done in California, but Conn. General paid no tax on its $100,000 reinsurance premium business, because such reinsurance business (totally unlike the Vermont Life) was not done in California, but was done exclusively in Connecticut; and, therefore, Conn. General does not have to pay California a tax upon business done in Connecticut.

We are not here concerned with the fact that California taxed New York Life (with $500,000 premium income) *plus* Vermont Life (with $100,000 premium income) only $13,000, while it taxed Equitable (with *only* $500,000 premium income) $13,000—although such unequal taxation may be a denial of equal protection (see p. 37 *infra*).

But we are very much concerned that after California (for its own reasons of internal policy) voluntarily chooses to allow insurance companies a deduction of reinsurance premiums, it attempts *to make up that loss of revenue* (resulting from its own favor) by singling out Conn. General (which paid its *full taxes* on all business done *in California*) and taxing it on business *not done* in California, but done exclusively in Connecticut.

With the foregoing brief explanation, we will now examine,

THE GROUNDS OF THE DECISION BELOW WHICH MAY BE THUS BRIEFLY SUMMARIZED:

I. Correct Propositions

1. Conn. General was authorized to do a reinsurance business in California because reinsurance is a mere modification of ordinary insurance, and was included in its authorization to do an insurance business in California (R. 29-30, 32).

2. Conn. General's reinsurance treaties were "executed wholly *without* the state of California"; all payments therefor were received at Hartford, Conn.; and "it performed no act of any kind and transacted no business of any kind [respecting reinsurance] in the state of California" (R. 28; 3 Cal. (2d) 83, 86).

3. In determining the amount of premiums on which the 2.6% tax is to be computed, California permits an insurance company doing business in California to deduct from the gross premiums received on its California business, all reinsurance consideration which it pays to other authorized companies on account of reinsurance treaties there made and there to be performed (R. 32; Cal. Const. Art. XIII, § 14(b).

II. Erroneous Propositions

From the foregoing conceded propositions, the California Supreme Court drew the erroneous conclusion that Conn. General ought to pay a tax on its *Connecticut* transactions for the extraordinary reason that it assumed that Conn. General received a Connecticut benefit from a California tax exemption allowed to *other* companies!

The California Court's novel reasoning is as follows:

1. The California tax exemption allowed to such *other* companies was a financial benefit to *them;* and

thereby *enabled* such other companies to pay Conn. General a higher premium in Connecticut for the reinsurance than such other companies could have otherwise afforded to pay to Conn. General! (R. 32); *whereas;* if California should hold that Conn. General was *not* liable for the 2.6% tax on its receipts *in Connecticut* then California would have to refuse such other companies (doing business in California) a deduction from *their* gross premiums of the amount so paid to Conn. General in Connecticut for reinsurance; this would cause such other companies to pay higher taxes in California, with the result that they would not be able to pay to Conn. General the reinsurance rates previously paid; hence, in either event, so the argument runs, Conn. General would lose on its reinsurance business in Connecticut, by the inability of the other companies to pay the rates which Conn. General demanded; and, therefore, Conn. General would either have to refuse the reinsurance business or reduce its reinsurance premiums (R. 32).

By that unusual course of reasoning, the California Court held that Conn. General was, therefore, actually *helped* by the tax deductions California allowed *other* companies; and being so helped, California was entitled to tax Conn. General on its *Connecticut* transactions, because of such alleged financial benefit to it through California's *tax deductions* allowed *other* companies!

2. From such illogical reasoning, the California Court, by a *tour de force,* then held that "the gross premiums received upon its [Conn. General's] business done in *this state*" must be held *to include* all sums collected by Conn. General *in Connecticut* from other companies for the reinsurance of such other companies' liabilities under their California policies, even though the reinsurance treaties were "executed and carried into effect wholly

without the state [of California]" (R. 32; 3 Cal. (2d) 83, 89).

3. Despite the fact that the reinsurance treaties were thus wholly consummated *in Connecticut,* and the entire consideration and indemnities paid *in Connecticut,* nevertheless Conn. General is *"estopped* to deny that said reinsurance was consummated in the state [California] unless and until it [Conn. General] can show that the insurer [other companies] has paid the full tax on gross premiums without exemption" (i. e. without deducting from their gross premiums the amounts which such reinsured companies paid to Conn. General in Connecticut—a constitutional exemption expressly given to such other companies by the California Constitution §14(b), (Id.).

4. Therefore, Conn. General is "liable for the tax computed upon its entire business transacted during those years, including its reinsurance of risks to property* situated in this state" (R. 32).

5. California maintains that foreign companies may "by a simple process of reinsurance outside the state" escape all premium taxes, unless the decision appealed from be upheld. (Conn. General v. Johnson, 3 Cal. (2d) 83.

The foregoing argument must be rejected;

(1) It is difficult to deal seriously with such reasoning. Of course, California's voluntary tax exemption to some companies was a financial benefit to them; but such

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* That is a clear error of fact, as Conn. General was not a fire insurance company in any sense; never reinsured any risks to *property* in California, but merely reinsured other companies' risks on the lives of California residents, under policies which such *other companies* had written in California.

financial benefit was not the reason why such companies were able to pay the reinsurance premiums in Connecticut to Conn. General. If California should (*a*) by altering its Constitution or (*b*) by a reversal of its Supreme Court's interpretation of its Constitution, now deny those deductions, and, thereby, those companies were not financially able to pay the premiums demanded by Conn. General, those companies would simply be unable to reinsure their risks—that it all there is about it.

It is certainly no valid constitutional argument (in support of California's right to tax the Conn. General) to say that if California did not tax it, California would have to tax the *other* companies more heavily. Whether California taxes other companies more heavily or less heavily is purely a matter for California's own determination, but that sheds no light whatever on the *power* of California to tax transactions *in Connecticut.* There is not a scintilla of evidence in the record that if California would withdraw its tax exemption to other companies, such other companies would be unable to pay to the Conn. General in Connecticut the reinsurance premiums which it charges for reinsuring risks. But however that may be, it is not an argument to support California's right to tax the Conn. General on account of reinsurance premiums paid in Connecticut under contracts made in Connecticut.

Finally, to say that California's favor (extended to other insurance companies in California) indirectly enabled such companies to give profitable business to Conn. General in Connecticut and thereby justifies California in taxing Conn. General because of such favors to others, is about the same thing as saying that if Kansas' climate and laws permit wheat to be produced at a very low cost, thereby enabling Minnesota flour mills to manufacture flour so cheaply that these mills can sell the flour at a big

profit, Kansas is thereby justified in taxing Minnesota mills, on the ground that such mills are deriving a profit through benefits extended to them by Kansas!

(2) Of course, the California Supreme Court has the exclusive right to say what its own Constitution means; and if it says that gross premiums received from "business done" in California include premiums collected upon business done in Connecticut, such *interpretation* is binding here. But such interpretation does not thereby give any validity to California's effort to tax something that is done in Connecticut.

(3) In face of the undisputed fact that the treaties were made, premiums and losses paid, and every act of performance done, *in Connecticut alone*—and that absolutely *nothing* was done in California—the Supreme Court still says that the Conn. General is "estopped to deny" those facts until it can show that the reinsured companies have "paid the full tax of gross premiums *without* exemption" (3 Cal. (2d) p. 89). It is useless to discuss such an argument. No doctrine of estoppel is involved. There is no burden on Conn. General to show whether other insurance companies have or have not paid their taxes to California.

The only question is whether California has the constitutional power to tax Conn. General on reinsurance premiums collected *in Connecticut*. The answer to that question does not depend on any question of estoppel, or on Conn. General showing that *other* companies have paid something *more* than California law requires such other companies to pay. The answer to the question depends solely upon whether, under the admitted facts, California grants to Conn. General such a franchise or privilege as justifies a California tax upon undisputed transactions *in Connecticut*.

(4) (5) If California is dissatisfied with the financial effect of granting a tax exemption (i.e. deduction of reinsurance premiums from gross premiums in determining the amount of premiums to be taxed at 2.6%), all that California has to do, is to do just what Pennsylvania and New York have done*, to-wit: *repeal that deduction,* and levy the tax primarily upon *all* the premiums collected in the State upon *all* business done in the State. In that event, the Equitable, New York Life, Atlantic Life and Conn. General (in our illustrations above) would each pay $13,000 tax; and in addition, Vermont Life would pay $2,600 tax.

The reason California does not do that, is that California (a) wishes to encourage companies to do business in California, and to do business only with other companies admitted to do business there or (b) wishes to protect its citizens by encouraging reinsurance, thereby, aiding in assuring the solvency of the companies. But the motive of California in granting the exemptions to other companies sheds no light on California's Constitutional power to tax Conn. General on *Connecticut* transactions.

California's error here is obvious. As Honorable Francis J. DeCelles, of Massachusetts, pointed out in his report to the National Convention of Insurance Commissioners in June, 1936:

> "Net direct premium volume would give to every state its proper tax from one of the original parties to the contract. We would eliminate the necessity of this constant checking and re-checking of company records with its consequent expense. Companies ceding insurance could and should retain that increment of the premium which represents the tax paid by the policyholder. This tax is usually included in the premium loading, and should be paid direct without

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* N. Y. Laws 1937, Ch. 530, p. 1200-1; Pa. Act 269 of 1933, p. 1095-6.

the necessity of following it through the books of several companies. The effect would be the same—not one cent of tax would be lost to the states. However, a lot of time and expense of collection would be saved. Reports of ceding companies rarely agree with the reports of accepting companies. Companies with different fiscal years or annual bases cause considerable confusion. We could save thousands of dollars annually by simplifying this basis." Proceedings N. A. I. C. 1936, P. 84, 85.

THIRD POINT

California denied Conn. General the equal protection of its laws in holding that Conn. General must pay a tax amounting to 5.5% of its premiums on California business, when other companies similarly located (but not doing a reinsurance business outside of California) are required to pay only 2.6% tax on California business.

In 1930-31 Conn. General collected $750,252.45 premiums on its California business. California required Conn. General to pay a tax for the privilege of doing this business in the amount of $41,244.16. This tax, measured by the California business of Conn. General, is at the rate of 5.5% of this business.

In another foregn life insurance company (***without*** any reinsurance business) collected also $750,252.45 premiums on account of California business, California would collect a tax from this company for the privilege of doing the same business, not at the rate of 5.5%, as imposed on Conn. General, but at the rate of 2.6%. The tax would be $19,506.56 instead of $41,244.16.

The effect of including this reinsurance business done ***outside*** of California in measuring Conn. General's tax on business in California, is that Conn. General pays for the privilege of doing business in California a tax at ***more than double the rate*** which other companies pay. The competitive disadvantage to Conn. General is at once apparent.

In 1930-31, it so happened that the business Conn. General did in California was almost equal to the reinsurance business taxed, which business was not done in California. The tax imposed on Conn. General was, therefore, just a little more than double what another company would have to pay for doing similar business. Assume, however, that Conn. General's ordinary insurance business done *in* California decreased, so that only $10,000 in premiums was collected by Conn. General on account of this business. Under California's method of taxation, the result would be that all of this $10,000 would be confiscated and California would call on Conn. General to bring into California other money to pay the balance of the tax. This California may not do (*Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1).

In taxing Conn. General on account of California business at a higher rate than other companies with a like amount of California business, that state denies Conn. General the equal protection of its laws in violation of the Fourteenth Amendment. The basis of distinction is arbitrary and unreasonable (*Hanover Insurance Company* v. *Harding*, 272 U. S. 494).

CONCLUSION

The judgment of the California Supreme Court should be reversed.

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HARTLEY F. PEART,
RAYMOND BENJAMIN,
WM. MARSHALL BULLITT,
Counsel for Appellant.

January 10, 1938.

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In the Supreme Court of the United States

October Term, 1937

No. 316

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
Appellant,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California,
Appellee.

BRIEF OF APPELLEE

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In the Supreme Court of the United States

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No. 316

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
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vs.

CHARLES G. JOHNSON, as Treasurer of the State of California,
Appellee.

BRIEF OF APPELLEE

STATEMENT OF THE CASE

This appeal from the final judgment of the Supreme Court of California presents the question whether section 14(b) of Article XIII of the California Constitution, as interpreted and applied with respect to the gross premiums receipts tax imposed upon Appellant, violates the 14th Amendment of the Constitution of the United States.

That portion of the provision pertinent to this inquiry reads:

> "Every insurance company or association doing business in this state shall annually pay to the state a tax of one and one-half* per cent upon the amount

*By authority of other provisions of said Article XIII the legislature changed the rate in 1921 (St. 1921, p. 21) to *two and sixty hundredths.*

> of the gross premiums received upon its business done in the state, less return premiums and reinsurance in companies or associations authorized to do business in this state; provided, that there shall be deducted from said one and one-half per cent upon the gross premiums the amount of any county and municipal taxes paid by such companies on real estate owned by them in this state. . . ."

Section 14(b) as it read at the time of the imposition in question will be found quoted in full in the Appendix at p. 13.

Concisely stated the question decided by the California Supreme Court was whether this tax provision included *reinsurance premiums* paid to Appellant by *other* "authorized" insurance companies where the reinsurance treaty or contract was executed and such reinsurance premium payments thereunder were made at *Hartford, Connecticut.* "Authorized" as used in the provision means licensed to do and doing specified classes of insurance business; having a Certificate of Authority from the Insurance Commissioner of California to transact the insurances specified therein. (R. 30.)

During the calendar year 1930 Appellant received from *other* "authorized" insurers for reinsurance the sum of $416,594.03. In addition thereto it received direct from its own policyholders the sum of $375,460.04 in premiums. (R. 4.) The first mentioned figure represented premiums collected on "policies or contracts of insurance issued" by such other "authorized" insurers to *residents* of California. It is more aptly an inference than direct allegation that such reinsurance premium payments to Appellant may be considered the *result* of

business originally written or done in California. The tax provision limits the deduction from the gross premium receipts to those reinsurance premium payments made to "authorized" insurers. Hence, we are justified, as were the California courts, in stating the inference to be a fact of the case.

The gross premium receipts derived from business done in California is the basis of the tax. The allegations of the complaint (R. 1-9), taken as true, fail to show that the tax was measured by or based upon any premium (reinsurance or direct) receipts other than receipts derived from business originally written in or transacted within the state of California.

The plain facts of the case are these: Appellant, an authorized insurance company, conceived the idea of making a treaty or contract of reinsurance at Hartford, Connecticut, providing therein that all reinsurance premium payments thereunder be made at that place, for the express purpose of claiming that such reinsurance business was not done within the jurisdiction of California; that hence the reinsurance premium receipts derived therefrom could not be included as "gross premium receipts", the base upon which the tax at 2.6% is calculated. It claimed to be exempt from taxation on that part of its reinsurance premium receipts which were paid to it at Hartford, under said reinsurance treaty, by other insurance companies authorized to do business in California, upon the theory that such reinsurance business was not done in the state of California and hence could not be made the basis of the gross premiums receipts tax.

DECISIONS OF CALIFORNIA SUPREME COURT INTERPRETING PROVISION IN QUESTION

Two decisions have been rendered by the Supreme Court of California upon the question whether such reinsurance premium payments were properly included by the taxing authorities as a part of the gross premiums upon which the tax is based. The first is

Connecticut General Life Ins. Co. v. *Johnson*, 3 Cal. (2nd) 83; 43 Pac. (2nd) 278.

in which the appeal to this Court was dismissed for want of a properly presented federal question. See

296 U. S. 535.

The second decision is involved here (R. 27 to 32 inclusive) and will be found reported in

93 Cal. Dec. 399;
67 Pac. (2nd) 675.

Speaking with reference to a company authorized to transact insurance business in California, the Court in the opinion first above mentioned, at page 89, said:

> "* * * No insurer can claim an exemption upon reinsurance premiums paid to an *unauthorized* company. Therefore, to prevent unjust discrimination, the state may not allow the exemption for reinsurance paid to an *authorized* company unless and until it is in a position to claim its uniform percentage of such reinsurance premiums so as to give it in the aggregate the equivalent of the percentage on the original gross premiums paid to the insurer. In short, the transaction is not between 'authorized' companies unless this result follows. Further, any

other construction of the section would not only be unjust discrimination against the domestic companies but would enable foreign companies, by a simple process of reinsurance outside the state, to escape altogether such tax exaction." (Italics ours.)

"We think the argument of respondent is sound and unanswerable. The intent to tax all gross premiums, or their equivalent, must be present or else the whole scheme is discriminatory and unworkable. Appellant is charged with knowledge that the state is entitled to said percentage, or to its equivalent, and also with the further knowledge that the state has this right above and in addition to any additional claims it may have under the so-called 'retaliatory' rights conferred by said section. Appellant, therefore, in order to state a cause of action for a refund must of necessity show that these rights of the state have been fully satisfied. This is but another way of saying that appellant is estopped to deny that said reinsurance was consummated in the state unless and until it can show that the insurer has paid the full tax on gross premiums without exemption, including claims of the state, if any, for retaliatory taxes. This showing appellant failed to make."

"That the term 'reinsurance' premiums is included in the term 'gross' premiums is clear, not only because of the nature of the insurance contract but also from the context of the provision, especially that portion thereof which allows, under certain conditions, a deduction of such payments from 'gross premiums' received, thereby implying their previous inclusion therein. * * *"

In the hearing before the California Supreme Court upon the consolidated cases involved here, Appellant

contended that it was not authorized to transact any reinsurance business in California. This contention will be found fully answered in the opinion (R. 28 to 32 incl.).

ARGUMENT AND AUTHORITIES

It is obvious that the purpose of the tax provision would be defeated had any other interpretation thereof been given. By this simple device of reinsurance outside the state, any number of insurance companies would be enabled to reduce their gross premiums to practically nothing. The only tax the state would be able to impose and collect would be that upon the authorized insurer writing the original policy and retaining all the original premium therefor.

As was aptly said in

Brown v. *Pittsburgh Life and Trust Company* (Ala.) 65 So. 699:

> "A literal interpretation which would defeat the manifest provisions of the statute and permit evasions will not be adopted if any other reasonable construction consistent with such purpose can be given to it * * * If the statute is to be construed as intending to make the basis for the computation of the tax levied only such premiums from resident policyholders as are actually received by the company within the State, then it lies within the power of the company to entirely defeat the tax and the purposes of the statute by hereafter requiring all policyholders in this State to remit their premiums to the home office of the company * * *"

And in

Pittsburgh Life and Trust Company v. *Young* (No. Carolina) 90 S. E. 568, at pages 571 and 572:

"It is not taxation of the receipts, but a tax equal to 2½% on their gross amount * * * The standard is the volume of the earnings and not the method of payment. Any other interpretation would render the legislation nugatory, and disappoint the clear intention of the legislation. * * * But the revenue law shows, without any doubt, that the 'receipts' intended were those derived from its business in this State."

THE TAX IS A FRANCHISE TAX EXACTED FOR THE PRIVILEGE OF DOING BUSINESS IN THIS STATE

In two recent decisions of the Supreme Court of California, and the only decisions affecting the provision in question in respect to the character of the tax thereby imposed, it was said:

"'The gross premiums tax required to be paid by insurance companies, although in lieu of certain taxes *upon* property, is not, like the public utilities gross receipts tax, by the terms of the constitutional provision itself a tax *upon* property. Rather, (italics added) *it is a franchise tax exacted for the privilege of doing business in this State* * * *' We therefore hold that the tax on insurance companies levied pursuant to Section 14, Subdivision (b), of Article XIII of the Constitution is an excise or privilege tax and not, as contended by

appellant insurance commissioner a property tax. * * *"

Samuel L. Carpenter, Jr., as Ins. Com. of the State of California, v. *People's Mutual Life Ins. Co. et al.*, 94 Cal. Dec. 674.

The quotation in the above cited case was taken from

Consolidated Title Securities Company v. *Hopkins*, 1 Cal. (2d) 414, at 419.

With reference to a similar tax the Supreme Court of Pennsylvania in the case of

Commonwealth v. *Equitable Life Assurance Society*, 239 Pa. State 288, 86 Atl. 787,

held that the tax there, similar to the imposition here, was upon a privilege actually used and this court in affirming that decision, in

Equitable Life Assurance Society v. *Commonwealth*, 238 U. S. 143,

said:

"The question is not what is *doing business* within a state in such a sense as to lay a foundation for service of process there. It being established that the relation of the foreign company to domestic policyholders constituted doing business within the meaning of the statute, the question is whether the company may be taxed in respect of it in this way, whatever it may be called. *We are dealing with a corporation that has subjected itself to the jurisdiction of the state;* there is no question that the

state has a right to tax it and the only doubt is whether it may take this item into account in fixing the figure of the tax. * * * The tax is upon a privilege actually used. The only question concerns the mode of measuring the tax. *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 162, 163. As to that a certain latitude must be allowed. * * *" (Italics ours.)

PROPERTY BEYOND BORDERS OF CALIFORNIA NOT TAXED

As we have shown, the imposition of the tax involved here was not upon property beyond the jurisdiction of California. The appellant has been at all times mentioned in the complaint subject to the jurisdiction of the California taxing authorities. Likewise, all other insurance companies who ceded a portion of their original premium receipts to it were subject to the jurisdiction of the California taxing authorities. The situation is comparable to that dealt with in the case of

Compania de Tabacos v. *Collector*, 275 U. S. 87, at p. 98.

where this question was asked:

"Does the fact, that while the Tobacco Company and the London Company were within the jurisdiction of the Philippines, they made a contract outside of the Philippines for the insurance of merchandise in the Philippines, prevent the imposition upon the assured of a tax of one per cent upon the money paid by it as a premium to the London Company?"

And the question was answered, viz.:

> "This we think must be answered affirmatively under *Equitable Life Society* v. *Pennsylvania,* 238 U. S. 143. * * *"

We cannot leave this case without quoting the following pertinent excerpt from the dissenting opinion of the late Mr. Justice Holmes, page 100:

> "* * * The government has the assured within its jurisdiction. I can see no ground for denying its right to use its power to tax unless it can be shown that it has conferred no benefit of the kind that would justify the tax, as is held with regard to property outside of a state belonging to one within it. *Frick* v. *Pennsylvania*, 268 U. S. 473, 489. But here an act was done in the islands that was intended by the plaintiff to be and was an essential step toward the insurance, and, if that is not enough, the government of the islands was protecting the property at the very moment in respect of which it levied the tax. Precisely this question was met and disposed of in *Equitable Life Assurance Co.* v. *Pennsylvania*, 238 U. S. 143, 147.
>
> "The result of upholding the government's action is just. *When it taxes domestic insurance it reasonably may endeavor not to let the foreign insurance escape. If it does not discriminate against the latter, it naturally does not want to discriminate against its own.* * *" (Italics ours.)

Mr. Justice Brandeis concurred in the dissent.

The dissent, however, was not to that portion of the decision of this court referred to as the second point

and found at page 98. It was to the first point in that case with which we are not here concerned.

The decision above we submit is controlling of the question here.

INTERPRETATION OF PROVISION IN QUESTION IS NOT OFFENSIVE TO ANY FEDERAL CONSTITUTIONAL PROVISION AND THEREFORE SHOULD BE AFFIRMED BY THIS COURT

It is the long and well established rule of this court that the decision of the highest court of the state construing one of its own statutes or constitutional provisions if not offensive to a federal constitutional provision is controlling upon this court.

Mutual Reserve Fund Association v. *Phelps,* 190 U. S. 157 at 158;

New York v. *Roberts,* 171 U. S. 659.

CONCLUSION

It will be noted that the tax imposition in no way involves the control of any contract executed beyond the borders of California. Freedom of contract is, therefore, not involved. All that is involved is the question of what are the gross premium receipts of an insurance corporation by which a tax is measured and imposed, the insurance corporation admittedly being within the jurisdiction of the state and the portion of such premium receipts admittedly having been derived from business originally transacted within the state. Was it not proper for the California tax authorities to use such receipts as the basis upon which the tax in question was

imposed? We submit the question should be answered affirmatively.

Respectfully submitted,

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Attorneys for Appellee.

APPENDIX

Article XIII, Section 14b:

"Every insurance company or association doing business in this state shall annually pay to the state a tax of one and one-half per cent upon the amount of the gross premiums received upon its business done in this state, less return premiums and reinsurance in companies or associations authorized to do business in this state; provided, that there shall be deducted from said one and one-half per cent upon the gross premiums the amount of any county and municipal taxes paid by such companies on real estate owned by them in this state. This tax shall be in lieu of all other taxes and licenses, state, county and municipal, upon the property of such companies except county and municipal taxes on real estate, and except as otherwise in this section provided; provided, that when by the laws of any other state or country, any taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations or prohibitions, are imposed on insurance companies of this state, doing business in such other state or country, or upon their agents therein, in excess of such taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations or prohibitions, imposed upon insurance companies of such other state or country, so long as such laws continue in force, the same obligations and prohibitions of whatsoever kind may be imposed by the legislature upon insurance companies of such other state or country doing business in this state."

p. 1, 4.

SUPREME COURT OF THE UNITED STATES.

No. 316.—October Term, 1937.

Connecticut General Life Insurance Company, Appellant, *vs.* Charles G. Johnson, as Treasurer of the State of California. } Appeal from the Supreme Court of the State of California.

[January 31, 1938.]

Mr. Justice Stone delivered the opinion of the Court.

Appellant is a Connecticut corporation, admitted to do an insurance business in California. In addition to its business conducted within that state it has entered into contracts with other insurance corporations likewise licensed to do business in California, reinsuring them against loss on policies of life insurance effected by them in California and issued to residents there. These reinsurance contracts were entered into in Connecticut where the premiums were paid and where the losses, if any, were payable. The question for decision is whether a tax laid by California on the receipt by appellant in Connecticut of the insurance premiums during the years 1930 and 1931, infringes the due process clause of the Fourteenth Amendment.

In suits brought in the state court by appellant against respondent, state treasurer, to recover the taxes paid, the Supreme Court of California sustained demurrers to the complaints and gave judgments for the respondent. The cases, having been consolidated, come here on a single appeal under § 237 (a) of the Judicial Code. 28 U. S. C. § 344 (a).

Section 14 of Art. XIII of the California constitution, as supplemented by Act of March 5, 1921 (Stats. 1921, c. 22, pp. 20, 21, Political Code, § 3664b), fixing the rate of tax, lays upon every insurance company doing business within the state an annual tax of 2.6% "upon the amount of the gross premiums received upon its business done in this state, less return premiums and reinsurance in companies or associations authorized to do business in this state. . . ." The Supreme Court of California has declared that the constitutional provision imposes "a franchise tax exacted for the privilege of doing business" in the state. *Consolidated Title Securities Co.* v. *Hopkins*, 1 Cal. (2d) 414, 419; compare

Carpenter v. *People's Mutual Life Insurance Co.*, 94 Cal. Dec. 674.

Although in terms the "gross premiums received upon . . . business done in this state", less the specified deductions, are made the measure of the tax, the state court in this, as in an earlier case, *Connecticut General Life Insurance Co.* v. *Johnson*, 3 Cal. (2d) 83 (appeal dismissed for want of a properly presented federal question, 296 U. S. 535), has held that the measure includes the premiums on appellant's reinsurance policies effected and payable in Connecticut. In this case it has declared also that the policy of the state, expressed in the constitutional provision, is "to avoid double taxation without any loss of revenue to the state". To accomplish that end the deduction of reinsurance premiums paid to companies authorized to do business within the state is allowed, it is said, on the theory that the benefit of the deduction will be passed on to the reinsurer who, being authorized to do business within the state, may be taxed on the reinsurance premiums as a means of equalizing the tax and as an offset against the benefit of the deduction which he ultimately enjoys.

No contention is made that appellant has consented to the tax imposed as a condition of the granted privilege to do business within the state. Nor could it be, for it appears that appellant had conducted its business in California under state license for many years before the taxable years in question and before the taxing act was construed by the highest court of the state, in *Connecticut General Life Insurance Co.* v. *Johnson, supra*, to apply to premiums received in Connecticut from reinsurance contracts effected there. A corporation which is allowed to come into a state and there carry on its business may claim, as an individual may claim, the protection of the Fourteenth Amendment against a subsequent application to it of state law. *Hanover Fire Insurance Co.* v. *Harding*, 272 U. S. 494; *compare Kentucky Finance Corporation* v. *Paramount Auto Exchange Corporation*, 262 U. S. 544.

It is said that the state could have lawfully accomplished its purpose if the statute had further stipulated that the deduction should be allowed only in those cases where the reinsurance is effected in the state or the reinsurance premiums paid there. But as the state has placed no such limitation on the allowance of deductions, the end sought can be attained only if the receipt by appellant of the reinsurance premiums paid in Connecticut upon the Connecticut policies is within the reach of California's taxing power. Appellee argues that it is, because the reinsurance transac-

tions are so related to business carried on by appellant in California as to be a part of it and properly included in the measure of the tax; and because, in any case, no injustice is done to appellant since the effect of the statute as construed is to redistribute the tax, which the state might have exacted from the original insurers but did not, by assessing it upon appellant to the extent to which it has received the benefit of the allowed deductions.

But the limits of the state's legislative jurisdiction to tax, prescribed by the Fourteenth Amendment, are to be ascertained by reference to the incidence of the tax upon its objects rather than the ultimate thrust of the economic benefits and burdens of transactions within the state. As a matter of convenience and certainty, and to secure a practically just operation of the constitutional prohibition, we look to the state power to control the objects of the tax as marking the boundaries of the power to lay it. Hence it is that a state which controls the property and activities within its boundaries of a foreign corporation admitted to do business there may tax them. But the due process clause denies to the state power to tax or regulate the corporation's property and activities elsewhere. *Union Refrigerator Transit Co.* v. *Kentucky*, 199 U. S. 494; *New York Life Insurance Co.* v. *Head*, 234 U. S. 149; *New York Life Insurance Co.* v. *Dodge*, 246 U. S. 357; *St. Louis Compress Co.* v. *Arkansas*, 260 U. S. 346; *Compañia De Tabacos* v. *Collector*, 275 U. S. 87; *Home Insurance Co.* v. *Dick*, 281 U. S. 397; *Hartford Accident & Indemnity Co.* v. *Delta & Pine Land Co.*, 292 U. S. 143; *Boseman* v. *Connecticut General Life Ins. Co.*, 301 U. S. 196; *People ex rel. Sea Insurance Co.* v. *Graves*, 274 N. Y. 312; compare *Provident Savings Life Assurance Society* v. *Kentucky*, 239 U. S. 103. It follows that such a tax, otherwise unconstitutional, is not converted into a valid exaction merely because the corporation enjoys outside the state economic benefits from transactions within it, which the state might but does not tax, or because the state might tax the transactions which the corporation carries on outside the state if it were induced to carry them on within.

Appellant, by its reinsurance contracts, undertook only to indemnify the insured companies against loss upon their policies written in California. The reinsurance involved no transactions or relationship between appellant and those originally insured, and called for no act in California. *Connecticut General Life Insur-*

ance Co. v. *Johnson, supra,* 87; compare *Morris & Co.* v. *Skandinavia Insurance Co.,* 279 U. S. 405, 408. Apart from the facts that appellant was privileged to do business in California, and that the risks reinsured were originally insured against in that state by companies also authorized to do business there, California had no relationship to appellant or to the reinsurance contracts. No act in the course of their formation, performance or discharge, took place there. The performance of those acts was not dependent upon any privilege or authority granted by it, and California laws afforded to them no protection.

The grant by the state of the privilege of doing business there and its consequent authority to tax the privilege do not withdraw from the protection of the due process clause the privilege, which California does not grant, of doing business elsewhere. *Western Union Telegraph Co.* v. *Kansas,* 216 U. S. 1; *International Paper Co.* v. *Massachusetts,* 246 U. S. 135; *Louisville & Jeffersonville Ferry Co.* v. *Kentucky,* 188 U. S. 385, 398. Even though a tax on the privilege of doing business within the state in insuring residents and risks within it may be measured by the premiums collected, including those mailed to the home office without the state, *Equitable Life Assurance Society* v. *Pennsylvania,* 238 U. S. 143, and though the writing of policies without the state insuring residents and risks within it is taxable because within the granted privilege, *Compañia De Tabacos* v. *Collector, supra,* 98, there is no basis for saying that reinsurance which does not run to the original insured, and which from its inception to its termination involves no action taken within California, even the settlement and adjustment of claims, is embraced in any privilege granted by that state. *Provident Savings Life Assurance Society* v. *Kentucky, supra,* 112; *Compañia De Tabacos* v. *Collector, supra,* 96; compare *Equitable Life Assurance Society* v. *Pennsylvania, supra,* 147; *Compañia De Tabacos* v. *Collector, supra,* 98. All that appellant did in effecting the reinsurance was done without the state and for its transaction no privilege or license by California was needful. The tax cannot be sustained either as laid on property, business done, or transactions carried on within the state, or as a tax on a privilege granted by the state.

Reversed.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 316.—October Term, 1937.

Connecticut General Life Insurance Company, Appellant, *vs.* Charles G. Johnson, as Treasurer of the State of California. } Appeal from the Supreme Court of the State of California.

[January 31, 1938.]

Mr. Justice Black, dissenting.

I do not believe that this California corporate franchise tax has been proved beyond all reasonable doubt to be in violation of the Federal Constitution[1] and I believe that the judgment of the Supreme Court of California should be affirmed. Traditionally, states have been empowered to grant or deny foreign corporations the right to do business within their borders,[2] and " . . . may exclude them arbitrarily or impose such conditions as . . . (they) will upon their engaging in business within (their) . . . . jurisdiction."[3]

California laid an annual tax upon gross insurance premiums which the Supreme Court of California has construed to be "a franchise tax exacted for the privilege of doing business." In measuring this franchise tax imposed upon corporations the state includes reinsurance premiums paid to the corporation on contracts made without the state, *where such reinsurance protects citizens of the State of California.* There is no attempt by this tax to regulate the business of the insurance company in any state except California.

The record does not indicate that California made any contract with this Connecticut corporation guaranteeing it a permanent

[1] Cf. Ogden *v.* Saunders, 12 Wheat. 213, 270.

[2] Bank of Augusta *v.* Earle, 13 Pet. 519; Paul *v.* Virginia, 8 Wall. 168; Ducat *v.* Chicago, 10 Wall. 410; Horn Silver Mining Co. *v.* New York, 143 U. S. 305.

[3] Hanover Insurance *v.* Harding, 272 U. S. 494, 507.

franchise to do business in California on the same terms and conditions upon which it entered the state.

"A state which freely granted the corporate privilege for intrastate commerce may change its policy. . . . . , in the absence of contract, there is no vested interest which requires the continuance of a legislative policy however expressed—whether embodied in a charter or in a system of taxation."[4]

It may be that California believes that by this tax it can stimulate the reinsurance business of companies making their reinsurance contracts in California. The right of a state to foster its own domestic industries by its taxing system has been sustained by this Court.[5]

This Court has also frequently sustained the right of a state to impose conditions on foreign corporations in order to favor its own corporations.[6] If a state did not have this privilege it could not protect the domestic business of its own corporations from undesirable competition by foreign corporations. The State of California has the constitutional right to limit the privileges of its own corporations and to reserve the right to control their privileges and to define and limit their activities.[7] If California has the lawful constitutional right (as this Court has many times said it has) to impose conditions upon foreign corporations so as to protect domestic corporations, its own elected legislative representatives should be the judges of what is reasonable and proper in a democracy.

With reference to a corporate tax imposed by the State of Louisiana, this Court has said: "The appellants, by incorporating in some other State, or by spreading their business and activities over other States, cannot set at naught the public policy of Louisiana (California?). . . . The policy Louisiana (California?) is free to adopt with respect to the business activities of her own citizens she may apply to the citizens of other States who conduct the same business within her borders, and this irrespective of

[4] Brandeis, J., dissenting, Liggett Co. *v.* Lee, 288 U. S. 546.

[5] New York *v.* Roberts, 171 U. S. 658; Magnano Co. v. Hamilton, 292 U. S. 40; Fox *v.* Standard Oil Co., 294 U. S. 87; Aero Mayflower Transit Co. *v.* Georgia Commissioners, 295 U. S. 285; Alaska Fish Co. *v.* Smith, 255 U. S. 44, 48.

[6] Prudential Insurance Co. *v.* Cheek, 259 U. S. 530, 536; Pemlina Mining Co. *v.* Pennsylvania, 125 U. S. 181, 189.

[7] Fifth Avenue Car Co. *v.* New York, 221 U. S. 467; Stone *v.* Mississippi, 101 U. S. 814, 820.

whether the evils requiring regulation arise solely from operations in Louisiana (California?) or are in part the result of extra-State transactions."[8]

But it is contended that the due process clause of the Fourteenth Amendment prohibits California from determining what terms and conditions should be imposed upon this Connecticut corporation to promote the welfare of the people of California.

I do not believe the word "person" in the Fourteenth Amendment includes corporations. "The doctrine of stare decisis, however appropriate and even necessary at times, has only a limited application in the field of constitutional law."[9] This Court has many times changed its interpretations of the Constitution when the conclusion was reached that an improper construction had been adopted.[10] Only recently the case of *West Coast Hotel Company* v. *Parish*, 300 U. S. 379, expressly overruled a previous interpretation of the Fourteenth Amendment which had long blocked state minimum wage legislation. When a statute is declared by this Court to be unconstitutional, the decision until reversed stands as a barrier against the adoption of similar legislation. A constitutional interpretation that is wrong should not stand. I believe this Court should now overrule previous decisions which interpreted the Fourteenth Amendment to include corporations.

Neither the history nor the language of the Fourteenth Amendment justifies the belief that corporations are included within its protection. The historical purpose of the Fourteenth Amendment was clearly set forth when first considered by this Court in the *Slaughter House Cases*, 16 Wall. 36, decided April, 1873—less than five years after the proclamation of its adoption. Mr. Justice Miller speaking for the Court said:

"Among the first acts of legislation adopted by several of the States in the legislative bodies which claimed to be in their normal relations with the Federal government, were laws which imposed upon the colored race onerous disabilities and burdens, and curtailed their rights in the pursuit of life, liberty and property to such an extent that their freedom was of little value, while they

[8] Atl. & Pac. Te Co. *v.* Grosjean, 301 U. S. 427.

[9] Stone and Car ozo, JJ., concurring, St. Joseph Stock Yards Co. *v.* United States et al., 298 U. S. 38 at 94.

[10] See Collection of cases, Notes 1, 2, 3 and 4, Dissenting Opinion of Justice Brandeis, Burnet *v.* Coronado Oil and Gas Co., 285 U. S. 406, 407, 408, 409.

had lost the protection which they had received from their former owners from motives both of interest and humanity. . . .

"These circumstances, whatever of falsehood or misconception may have been mingled with their presentation, forced . . . the conviction that something more was necessary in the way of Constitutional protection to the unfortunate race who have suffered so much. . . . (Congressional leaders) accordingly passed through Congress the proposition for the *fourteenth amendment, and . . . declined to treat as restored to their full participation in the government of the Union the States which had been in insurrection,* until they ratified that article by a formal vote of their *legislative bodies.*" (p. 70.)

Certainly, when the Fourteenth Amendment was submitted for approval, the people were not told that the states of the South were to be denied their normal relationship with the Federal Government unless they ratified an amendment granting new and revolutionary rights to corporations. This Court, when the *Slaughter Houses* cases were decided in 1873, had apparently discovered no such purpose. The records of the time can be searched in vain for evidence that this Amendment was adopted for the benefit of corporations. It is true that in 1882, twelve years after its adoption, and ten years after the *Slaughter Houses* cases, *supra,* an argument was made in this Court that a journal of the joint Congressional Committee which framed the Amendment, secret and undisclosed up to that date, indicated the Committee's desire to protect corporations by the use of the word "person."[11] Four years later, in 1886, this Court in the case of *Santa Clara County* v. *Southern Pacific Railroad,* 118 U. S. 394, decided for the first time that the word "person" in the Amendment did in some instances include corporations. A secret purpose on the part of the members of the Committee, even if such be the fact, however, would not be sufficient to justify any such construction. The history of the Amendment proves that the people were told that its purpose was to protect weak and helpless human beings and were not told that it was intended to remove corporations in any fashion from the control of state governments. The Fourteenth Amendment followed the

[11] (San Mateo County v. Southern Pacific Railroad, 116 U. S. 138.) See, Benj. B. Kendrick, "Journal of the Joint Committee on Reconstruction" (1914, New York); Howard J. Graham, "The 'Conspiracy Theory' of the Fourteenth Amendment," 47 Yale Law Journal 371; Donald Barr Chidsey, "The Gentleman from New York—A Life of Roscoe Conklin," Yale University Press (1935).

freedom of a race from slavery. Justice Swayne said in the *Slaughter Houses Cases, supra,* that "by 'any person' was meant *all* persons within the jurisdiction of the State. No distinction is intimated on account of race or color." Corporations have neither race nor color. He knew the Amendment was intended to protect the life, liberty and property of *human* beings.

The language of the Amendment itself does not support the theory that it was passed for the benefit of corporations.

The first clause of Section 1 of the Amendment reads: "All *persons* born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside." Certainly a corporation cannot be naturalized and "persons" here is not broad enough to include "corporations."

The first clause of the second sentence of Section 1 reads: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." While efforts have been made to persuade this Court to allow corporations to claim the protection of *this* clause, these efforts have not been successful.[12]

The next clause of the second sentence reads: Nor shall any State deprive any *person* of life, liberty or property without due process of law; . . ." It has not been decided that this clause prohibits a state from depriving a corporation of "life." This Court has expressly held that "the liberty guaranteed by the Fourteenth Amendment against deprivation without due process of law is the liberty of *natural, not artificial persons.*"[13] Thus, the words "life" and "liberty" do not apply to corporations, and of course they could not have been so intended to apply. However, the decisions of this Court which the majority follow hold that corporations are included in this clause insofar as the word "property" is concerned. In other words, this clause is construed to mean as follows:

"Nor shall any State deprive any *human being* of life, liberty or property without due process of law; nor shall any State deprive any corporation of property without due process of law."

The last clause of this second sentence of Section 1 reads: "nor deny to any person within its jurisdiction the equal protection of

[12] Selover, etc. *v.* Walsh, 226 U. S. 112, 126.

[13] Western Turf Association *v.* Greenburg, 204 U. S. 363.

the laws." As used here, "person" has been construed to include corporations.[14]

Both Congress and the people were familiar with the meaning of the word "corporation" at the time the Fourteenth Amendment was submitted and adopted. The judicial inclusion of the word "corporation" in the Fourteenth Amendment has had a revolutionary effect on our form of government. The states did not adopt the Amendment with knowledge of its sweeping meaning under its present construction. No section of the Amendment gave notice to the people that, if adopted, it would subject every state law and municipal ordinance, affecting corporations, (and all administrative actions under them) to censorship of the United States courts. No word in all this amendment gave any hint that its adoption would deprive the states of their long recognized power to regulate corporations.

The second section of the Amendment informed the people that representatives would be apportioned among the several states "according to their respective numbers, counting the whole number of *persons* in each State excluding the Indians not taxed." No citizen could gather the impression *here* that while the word "persons" in the second section applied to human beings, the word "persons" in the first section *in some instances* applied to corporations. Section 3 of the Amendment said that "no *person* . . . shall be a Senator or Representative in Congress", (who "engaged in insurrection"). There was no intimation *here* that the word "person" in the first section *in some instances* included corporations.

This Amendment sought to prevent discrimination by the states against classes or races. We are aware of this from words spoken in this Court within five years after its adoption, when the people and the courts were personally familiar with the historical background of the Amendment. "We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision."[15] Yet, of the cases in this Court in which the Fourteenth Amendment was applied during the first fifty years after its adoption, less than one-half of one per cent

[14] Gulf, etc., Ry. Co. *v.* Ellis, 165 U. S. 150, 154.

[15] Slaughter House Cases, *supra.*

invoked it in protection of the negro race, and more than fifty per cent asked that its benefits be extended to corporations.[16]

If the people of this nation wish to deprive the States of their sovereign rights to determine what is a fair and just tax upon corporations doing a purely local business within their own State boundaries, there is a way provided by the Constitution to accomplish this purpose. That way does not lie along the course of judicial amendment to that fundamental charter. An Amendment having that purpose could be submitted by Congress as provided by the Constitution. I do not believe that the Fourteenth Amendment had that purpose, nor that the people believed it had that purpose, nor that it should be construed as having that purpose.

I believe the judgment of the Supreme Court of California should be sustained.

[16] Charles Wallace Collins, "The Fourteenth Amendment and the States", Boston (1912), page 138.